Exhibit D

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Page 1
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2
             UNITED STATES BANKRUPTCY COURT
3
             SOUTHERN DISTRICT OF NEW YORK
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5
    In Re:
6
                                Chapter 11
7
    LEHMAN BROTHERS
                                Case No. 08-13555(JMP)
    HOLDINGS, INC., et al., (Jointly Administered)
8
                    Debtors.
10
11
12
13
14
      VIDEOTAPED DEPOSITION OF DAVID JAMES COLES
15
                   New York, New York
16
                    February 4, 2010
17
18
19
20
21
22
23
    Reported by:
24
    KATHY S. KLEPFER, RMR, RPR, CRR, CLR
25
    JOB NO. 27495
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1			
1	Page 6		Page 7
	D. Coles	1	D. Coles
2	* * *	2	I have a degree in economics, and I started my
3	DAVID JAMES COLES, called as a	3	career with Arthur Andersen in the UK. I spent
4	witness, having been duly sworn by a Notary	4	about four years in the audit practice before
5	Public, was examined and testified as	5	moving across into corporate recovery, whereby
6	follows:	6	we performed a lot of investigations on behalf
7	EXAMINATION BY	7	of secured lenders, ran a few companies in
8	MR. THOMAS:	8	receivership, and then had the opportunity
9	Q. Mr. Coles, would you please state your	9	towards the end of my sixth year with Andersen
10	full name and address for the record?	10	in the UK to move across to the U.S.
11	A. David James Coles. 21 East 66th	11	I moved to Andersen's New York office
12	Street, New York, New York, 10065.	12	and was there for about two years doing
13	Q. Have you been deposed before?	13	turnaround-type work, and then at the end of
14	A. Yes.	14	that two years, I started work with Alvarez &
15	Q. Approximately how many times?	15	Marsal, who were CRO on an assignment and we
16	A. Two.	16	were providing the support to the CRO, and then
17	Q. And if at any point you're not sure of	17	for the next two years, I was largely working
18	my question or you'd like to ask me to clarify	18	with A&M but still an employee of Andersen.
19	it or rephrase it, please ask me to do so; I'll	19	So, at the end of those two years, I
20	be happy to.	20	had gotten my green card, felt comfortable about
21	A. Will do.	21	leaving Andersen, and switched across to A&M.
22	Q. Would you please give you a brief	22	And at that time, A&M was less than 20 people
23	general description of your educational	23	and today is 1700 people. So that would be 13
24	background.	24	years ago, and I've been a managing director
25	A. Sure. I'm a UK chartered accountant,	25	since 2000.
	Page 8		Page 9
1	D. Coles		
		11	D. Coles
2	O. And the last few years at A&M, how	1 2	D. Coles go-forward business out of that either and so it
2 3	Q. And the last few years at A&M, how would you describe your duties and	1 2 3	go-forward business out of that either and so it
3	would you describe your duties and	2	
3 4	would you describe your duties and responsibilities?	2 3	go-forward business out of that either and so it liquidated through this past holiday selling
3	would you describe your duties and	2 3 4	go-forward business out of that either and so it liquidated through this past holiday selling season.
3 4 5	would you describe your duties and responsibilities? A. The last few years have been a	2 3 4 5	go-forward business out of that either and so it liquidated through this past holiday selling season. Q. Are you still a managing director of
3 4 5 6 7 8	would you describe your duties and responsibilities? A. The last few years have been a combination of management roles in turnarounds	2 3 4 5	go-forward business out of that either and so it liquidated through this past holiday selling season. Q. Are you still a managing director of Alvarez?
3 4 5 6 7 8 9	would you describe your duties and responsibilities? A. The last few years have been a combination of management roles in turnarounds and management roles that have often led to	2 3 4 5 6 7	go-forward business out of that either and so it liquidated through this past holiday selling season. Q. Are you still a managing director of Alvarez? A. Yes.
3 4 5 6 7 8	would you describe your duties and responsibilities? A. The last few years have been a combination of management roles in turnarounds and management roles that have often led to liquidations and wind-downs.	2 3 4 5 6 7 8	go-forward business out of that either and so it liquidated through this past holiday selling season. Q. Are you still a managing director of Alvarez? A. Yes. Q. So when you take these positions with
3 4 5 6 7 8 9 10 11	would you describe your duties and responsibilities? A. The last few years have been a combination of management roles in turnarounds and management roles that have often led to liquidations and wind-downs. Q. And for the non-accountants, can you describe generally what turnarounds are? A. Yes. Turnarounds is where there might	2 3 4 5 6 7 8 9 10 11	go-forward business out of that either and so it liquidated through this past holiday selling season. Q. Are you still a managing director of Alvarez? A. Yes. Q. So when you take these positions with a turnaround company, you retain your position with Alvarez and take on a title or position with the company?
3 4 5 6 7 8 9 10 11 12	would you describe your duties and responsibilities? A. The last few years have been a combination of management roles in turnarounds and management roles that have often led to liquidations and wind-downs. Q. And for the non-accountants, can you describe generally what turnarounds are?	2 3 4 5 6 7 8 9 10 11 12	go-forward business out of that either and so it liquidated through this past holiday selling season. Q. Are you still a managing director of Alvarez? A. Yes. Q. So when you take these positions with a turnaround company, you retain your position with Alvarez and take on a title or position with the company? A. Yes, the the engagement letters are
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3 4 5 6 7 8 9 10 11 12 13 14	would you describe your duties and responsibilities? A. The last few years have been a combination of management roles in turnarounds and management roles that have often led to liquidations and wind-downs. Q. And for the non-accountants, can you describe generally what turnarounds are? A. Yes. Turnarounds is where there might be a salvageable business and you're attempting to improve the operations, perhaps refinance it, and usually doesn't involve a bankruptcy, and	2 3 4 5 6 7 8 9 10 11 12 13 14	go-forward business out of that either and so it liquidated through this past holiday selling season. Q. Are you still a managing director of Alvarez? A. Yes. Q. So when you take these positions with a turnaround company, you retain your position with Alvarez and take on a title or position with the company? A. Yes, the the engagement letters are always with Alvarez and it's Alvarez supplying personnel.
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3 4 5 6 7 8 9 10 11 12 13 14 15 6 17 18 9 20 21 22	would you describe your duties and responsibilities? A. The last few years have been a combination of management roles in turnarounds and management roles that have often led to liquidations and wind-downs. Q. And for the non-accountants, can you describe generally what turnarounds are? A. Yes. Turnarounds is where there might be a salvageable business and you're attempting to improve the operations, perhaps refinance it, and usually doesn't involve a bankruptcy, and then a liquidation probably does involve a bankruptcy and there's no go-forward enterprise. Q. And what is your current position today? A. I am Chief Restructuring Officer at Finlay Enterprises, Inc., which at one point was a billion-dollar jewelry retailer, and it ran the jewelry concessions within a number of	234567890112314 112314567890122	go-forward business out of that either and so it liquidated through this past holiday selling season. Q. Are you still a managing director of Alvarez? A. Yes. Q. So when you take these positions with a turnaround company, you retain your position with Alvarez and take on a title or position with the company? A. Yes, the the engagement letters are always with Alvarez and it's Alvarez supplying personnel. Q. When did you move over to Finlay? A. Finlay commenced in mid-February 2009. Q. When did you first have any interaction with Lehman? A. September 16, 2008. Q. When you switched to Finlay in February of '09, did that kind of end your involvement with Lehman?

D. Coles D. Coles Slowly moving me off those slates, but it's a very complex org. chart so I may still be hanging out there on a few subs. Q. On or about September 26, 2008, were you appointed CFO of Lehman at the time? D. Coles the balance sheets of all of the entitive we now found ourselves responsible we now found ourselves responsible following the sale to BarCap and also to the other administrations going on the color of the properties of the properties of the properties of the properties of the parameters of the properties of the parameters of the param	
 slowly moving me off those slates, but it's a very complex org. chart so I may still be hanging out there on a few subs. the balance sheets of all of the entition we now found ourselves responsible a So this was the residual estate 	
2 slowly moving me off those slates, but it's a 3 very complex org. chart so I may still be 4 hanging out there on a few subs. 2 the balance sheets of all of the entition we now found ourselves responsible 4 So this was the residual estate	
 very complex org. chart so I may still be hanging out there on a few subs. we now found ourselves responsible So this was the residual estate 	
4 hanging out there on a few subs. 4 So this was the residual estate	e ior.
6 you amointed CEO of Lahmon at the time?	
6 you appointed CFO of Lehman at the time? 6 to the other administrations going or	
7 A. I can't remember the exact date. That world, in Asia and in Europe.	
8 would sound about right. 8 Q. Was part of that effort or pro	ocess of
Q. CFO, comptroller and co-treasurer? 9 taking stock, did it involve an assess	
A. I think that's right, too. 10 what assets and liabilities had gone	and the second s
Q. Do you still hold any of those titles? 11 Barclays as part of the transaction are	
A. No. 12 stayed with Lehman?	
Q. And approximately how long did you 13 A. Yes.	
function as CFO for LBHI? 14 Q. Let me go ahead and show y	ou a
A. Through probably mid-February of 2009. 15 document that we'll mark as 583A.	
Q. And in a turnaround environment like 16 (Exhibit 583A, an e-mail chair	n from M.
this, what does the CFO, comptroller and 17 Kelly to J. Stiklorius dated Septer	
co-treasurer do? 18 2008, marked for identification, a	
A. Well, this one I think early on we 19 date.)	
realized it wasn't it wasn't a turnaround.	hat I
It was a controlled wind-down liquidation. It 21 don't see your name on, but you're re	
was job number 1 really was trying to control 22 in it. Do you know who Jonas Stikle	
cash and get a sense for liquidity. It was 23 A. I do.	
trying to support each of the separate business 24 Q. Did I get that pronunciation	right?
units, and it was taking stock of the assets and 25 A. Good enough.	
Page 12	Page 13
	5
2 Q. He's someone that worked with you at 3 Alvarez? Q. Martin Kelly. Thank you. Do you recall whether you had	lany
4 A. Yes, he worked directly for me, meetings with him that first week of	
	the Lemman
5 actually, in the early days there. 6 Q. This is an e-mail, the second-in-time 5 bankruptcy? 6 A. I can't recall that it was the first content of the co	rst
7 e-mail excuse me, the first-in-time e-mail 7 week. I do remember a couple of me	
from him to Kelly Martin says, "I'd like to 8 Martin attended, and we did attempt	
9 inquire about your availability to meet with 9 through a trial balance that he was co	
David Coles, Jim Fogarty, and myself for about Q. Would that have been sometimed to be a sometime with the collection of	
an hour to review the balance sheet and, in the filing of bankruptcy around the 1	
particular, the anticipated post-transaction 12 September and before the closing of	
balances." 13 balances." 13 transaction on the 22nd of September	
balances." 13 transaction on the 22nd of September A. Probably I'm not sure. It	
balances, does that refer to the effort to make 15 certainly was in those first two week	as l
sure you had taken stock of the assets and post-filing.	_
liabilities that went over to Barclays and the Q. Okay. Here there's a reference	ce by Mr.
ones that stayed behind that you would be Kelly to making this meeting happen	
responsible for? September 18. Do you know one wa	
20 A. Yes. 20 whether it happened on that day?	
Q. Did you in fact meet on or about 21 A. I don't.	
September 28 with September 18, excuse me, 22 Q. Okay. Let me show you anot	ther
23 document we'll mark as 584A.	
A. I can't recall. Actually, it's Martin 24 (Exhibit 584A, e-mail chain fr	om M.
25 Kelly to D. Coles and K. Wong, de	ated

	Pg 5	<u> Οι τ</u>	
	Page 14	:	Page 15
1	D. Coles	1	D. Coles
2	September 19, 2008, with attachment, marked	2	Martin Kelly was comptroller.
3	for identification, as of this date.)	3	Q. Okay. In what appears to be your
4	Q. And I'll note for the record this	4	e-mail, you write, "Some colleagues and I met
5	appears to be the same or a very similar exhibit	5	with Martin Kelly on Tuesday" and I guess as
6	as to Exhibit 470A, but it has it's a little	6	an initial matter, that Tuesday would be
7	clearer printout of the attachment, which is why	7	September 16 "on Tuesday and discussed the
8	I'm using it.	8	consolidated balance sheet and the likely
9	MR. TAMBE: I'll also note it doesn't	9	· ·
			post-BarCap sale BS." Do you see that?
10	have any Bates number on it.	10	A. Yes.
11	MR. THOMAS: Okay.	11	Q. Dos that refresh your recollection as
12	Q. Do you recognize this e-mail chain	12	to the timeframe in which you would have met
13	involving you dated September 18 and 19 of 2008?	13	with Mr. Kelly?
13 14 15	A. I don't.	14	A. Yes.
15	Q. The do you have any reason to doubt	15	Q. Okay. So that would have been on
16	that this was an e-mail chain that you	16	approximately September 16, 2008?
17	participated in?	17	A. Yes.
18	A. No.	18	Q. Okay. And the reference to the
19	Q. The e-mail that appears to be from you	19	"likely post-BarCap sale BS," can you just break
20	on September 18 to Kristy Wong, and do you	20	that out, what you mean?
21	recall who Kristy Wong is?	21	A. Yes. So there would have been a
22	A. Yes.	22	consolidated balance sheet at the time of the
23	Q. Who is that?	23	sale, and what we were looking to get from
24	A. She worked under Martin Kelly, so was	24	Martin and Kristy was a breakout of what assets
25	perhaps an accounting manager because I think	25	and liabilities had been sold or assumed by
		_	
	Page 16		Page 17
1	Page 16		Page 17
1	D. Coles	1	D. Coles
1 2	D. Coles BarCap pursuant to that sale and what was left	1 2	D. Coles "David, please see latest draft attached."
3	D. Coles BarCap pursuant to that sale and what was left with the residual estate that we, as as	1 2 3	D. Coles "David, please see latest draft attached." A. Yes.
3 4	D. Coles BarCap pursuant to that sale and what was left with the residual estate that we, as as LBHI's new executive office group, had	1 2 3 4	D. Coles "David, please see latest draft attached." A. Yes. Q. Is this the type of information you
3 4 5	D. Coles BarCap pursuant to that sale and what was left with the residual estate that we, as as LBHI's new executive office group, had responsibility for.	1 2 3 4 5	D. Coles "David, please see latest draft attached." A. Yes. Q. Is this the type of information you were asking for in your e-mail?
3 4 5 6	D. Coles BarCap pursuant to that sale and what was left with the residual estate that we, as as LBHI's new executive office group, had responsibility for. Q. And we can take a look at some later	1 2 3 4 5 6	D. Coles "David, please see latest draft attached." A. Yes. Q. Is this the type of information you were asking for in your e-mail? A. It was getting there. It's not quite
3 4 5 6 7	D. Coles BarCap pursuant to that sale and what was left with the residual estate that we, as as LBHI's new executive office group, had responsibility for. Q. And we can take a look at some later documents back and forth between Alvarez and	1 2 3 4 5 6 7	D. Coles "David, please see latest draft attached." A. Yes. Q. Is this the type of information you were asking for in your e-mail? A. It was getting there. It's not quite what I was requesting, because "consolidating"
3 4 5 6 7 8	D. Coles BarCap pursuant to that sale and what was left with the residual estate that we, as as LBHI's new executive office group, had responsibility for. Q. And we can take a look at some later documents back and forth between Alvarez and Weil Gotshal, but did you ever meet with Weil	1 2 3 4 5 6 7 8	D. Coles "David, please see latest draft attached." A. Yes. Q. Is this the type of information you were asking for in your e-mail? A. It was getting there. It's not quite what I was requesting, because "consolidating" would tend to have all of the subsidiaries and
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3 4 5 6 7 8 9 10 11 2 13 14 15 6 17 18 19 20 21 22	D. Coles BarCap pursuant to that sale and what was left with the residual estate that we, as as LBHI's new executive office group, had responsibility for. Q. And we can take a look at some later documents back and forth between Alvarez and Weil Gotshal, but did you ever meet with Weil Gotshal at any point? A. Yes. Q. In this this preclosing period, do you know if you had discussions with them? A. I don't recall. I don't recall if it was that first week or whether most of our impetus was trying to reach company people rather than debtors' counsel. Q. But at some point you had discussions with Weil Gotshal about the terms of the sale transaction and what was conveyed and what wasn't? A. Yes. Q. You're asking here for, "Do you have a	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 6 17 18 19 20 21 22	D. Coles "David, please see latest draft attached." A. Yes. Q. Is this the type of information you were asking for in your e-mail? A. It was getting there. It's not quite what I was requesting, because "consolidating" would tend to have all of the subsidiaries and have each of those laid down as a column, and this is a consolidated balance sheet from what I can tell. Q. I see. And do you know whether some of the strike that. We'll come back to it. If you would look, please, at the second page of the attachment under "Payables" about a third of the way down. Do you see that? A. Yes. Q. Do you see "Bonus Payable," "Cure Amounts," "Accounts Payable," do you see those lines? A. Yes. Q. And following those lines over, do you

Page 18 Page 19 D. Coles 1 D. Coles 2 2 Yes. point on the transaction in those first few 3 3 Q. Do you have any understanding as to weeks. the reason for that transaction adjustment? Q. Okay. Do you know if the accrual 4 A. Yes. I may not have before getting 5 amounts with respect to compensation also 6 this, this sheet, but the -- it was my 6 included severance, potential severance 7 7 understanding that the transaction with BarCap liability that Barclays was assuming as part of 8 had a feature in it whereby BarCap assumed a 8 the purchase agreement? 9 9 bonus pool for the employees it offered A. I don't recall. LO 0 positions to and, in addition, it sought to have Q. What was the -- for whatever .1 the estate assume and assign a vast quantity of 11 understanding you had with respect to the 12 12 executory contracts and that this was an compensation, the transaction adjustment here, 13 3 estimate of the cure amounts necessary to be what was the basis for that understanding? 14 14 able to effect that. A. To the extent that the purchaser, Q. That's for the second line? 5 15 BarCap, was assuming a liability that would 16 17 6 A. Yes. otherwise have been paid by LBI, then it was 7 Q. Okay. And what was the basis -- let's taking credit for the assumption of those 18 8 liabilities in arriving at its net purchase break it down. On the compensation, first of 19 19 all, did you ever read the Asset Purchase consideration. 20 Q. Who told you that? 20 Agreement or the Final Purchase Agreement as 21 amended by the Clarification Letter? A. I think I gathered that from my read 21 22 A. I may have had a copy. I don't now 22 of the purchase agreement. 23 recall whether I read it page-for-page or simply 23 Q. Okay. Anything else that would have 24 got like an executive summary of it. A 24 fed into that understanding? 25 colleague of mine, Jim Fogarty, was more on 25 A. No. Page 20 Page 21 1 D. Coles 1 D. Coles 2 2 Q. Okay. number of bankrupt entities over the years that A. Conversations with colleagues. that is required work to be done, but it's never 3 3 4 O. Now, if it was -- if there was a 4 easy, and with an organization as complex as 5 Lehman, that was going to be very difficult. So 5 transaction adjustment raising it that amount, he and his group spent a lot of time scanning 6 is that really assuming a liability that Lehman 6 7 7 would have otherwise had to incur, as you put documents, figuring out what kind of cure was 8 8 necessary for somebody else, a subsequent 9 MR. TAMBE: Objection to the form of 9 purchaser, BarCap, to assume and to have the 10 10 estate assume and assign those across to the the question. 11 purchaser, and so I got a sense over the weeks 1 1 You can answer. 12 12 A. I think these were both estimates. It that followed and the months that followed 13 13 would have been -- it could have been quite whether that number was a realistic number. 14 difficult as early as September 17 to have had 14 Q. And was it your understanding whether 15 really solid numbers for both of these 15 the number that was being calculated as an 16 estimate, as an estimate of what Barclays 16 categories, and on the cure payments in 17 17 actually would assume in terms of cure based particular, I did do some follow-up work with a 18 group within Lehman that I think did move across 18 upon their election, assume certain some unknown 19 to Barclays that wasn't part of the estate but 19 universe of contracts, or was it an estimate of 20 20 that tended to deal with all of the back office potential exposure, meaning that Barclays could 21 servicing, and there was an individual there incur up to that amount if they, you know, 21 assumed all the contracts? 22 22 whose name I don't now remember, but he was 23 tasked with creating an enormous database of all 23 MR. TAMBE: Objection to the form of 24 24 these executory contracts. the question. 25 And I know from having dealt with a 25 A. I'm not exactly clear. It -- what I

Page 22 Page 23 1 D. Coles D. Coles 2 typically have seen, and which what I would have 2 19th. 3 assumed here, is that the number is the maximum 3 Oh, you're right. O. 4 exposure and then you typically see a purchaser 4 A. Yes. 5 use its existing business relationships with 5 Q. Yes. Okay, so on the 19th. Do you 6 vendors to negotiate lesser amounts. 6 recall when you got this, did that kind of stand 7 Q. Is it your understanding in this out to you and you see the large transaction 8 transaction that Barclays had the discretion to 8 adjustments? 9 pick and choose which contracts it was going to 9 A. It wasn't the largest number on there. 10 assume? 10 In those early days of being on the case, our 11 MR. TAMBE: Objection to form. 11 whole -- I think my whole team struggled with a 12 12 A. I think that is the case, yes. renewed -- sorry, a new level of materiality 13 L 3 Q. So it wasn't agreeing to assume any that had to come into play here because we were 14 particular liability amount; rather, it was just 14 dealing with billions and almost trillions of 15 agreeing to assume cure amounts for whatever 15 dollars. 16 16 contracts it assumed? So I -- I think I would have noted 17 17 that column. I would have been perhaps more A. That I'm not actually clear. 18 Q. Okay. In any event, just to go in a 18 interested in the liquidity situation to make 19 little more detail about the work with the 19 sure that those assets that were very liquid 20 were under my control, secure, and that I was 20 group, so you would have gotten this at least -at least as of September 18, 2008. 21 being a custodian, a good custodian of those. 21 22 22 Do you recall whether you noted the Q. In terms of the -- let's take the "Cure Payments," "Accounts Payable" line and 23 transaction adjustments at or about, you know, 23 then "Transaction Adjustment." Can you just 24 at that time? 24 25 25 kind of walk through? I understand that you A. I think it might have come on the Page 24 Page 25 1 D. Coles 1 D. Coles 2 2 would have had other issues too, but what you well have had the technology available to do 3 3 would have -- what you did do that you recall in 4 terms of investigating those or understanding 4 Q. So your understanding of this, this 5 5 more about the transaction adjustments? transaction adjustment figure here that you 6 6 A. Sure. On the cure payment side, I had called 1645, that -- so somebody at this point would have already -- someone in Office Services 7 earlier talked about an individual at Lehman, 8 would have already tried to compile all those 8 and I think he had gone across to BarCap and he 9 was in Office Services. And he was tasked with 9 contracts and come up with a number? 10 10 MR. TAMBE: Objection to the form of creating this very substantial database of all 11 11 of these contracts, and there was a process by the question. 12 12 which vendors, I remember one -- a motion A. Not exactly sure how that number was 13 arrived at specifically. I know that the tasks 13 perhaps that was filed or a procedure for the 14 that that group were undertaking, I did mention 14 assumption and assignment of these contracts where the vendors for these agreements would 15 that it's usually a Heraclean task for an 15 16 have an ability to look online, check their 16 organization to reach out across its 17 17 subsidiaries, get a copy of every executory contract, check what was there for their 18 18 contract, and then attempt to figure out how estimated cure, and then there was a procedure much would be -- would need to be paid to cure 19 by which, if they were comfortable, they could 19 20 accept the assumption and assignment across to 20 21 Barclays. 21 If this came out on -- came to me 22 22 Q. Is that the Epiq Website? probably on the 19th, so it might have been done 23 A. I think Epig did host it, yes. It's 23 on the 18th, that was pretty spectacular to get 24 that close to a real number for what must have 24 the kind of thing that Epiq does. I'm not 25 actually sure whether Epiq did that. Lehman may 25 been thousands of executory contracts.

Page 26 Page 27 D. Coles D. Coles 2 2 O. So that's not a number that would just liability that is settled by the purchaser to be 3 3 be in existence on a firm system -markedly lower than that. 4 Q. And is that a -- part of the function A. No. 5 6 Q. -- that you could pull up? It of it being the actual amount being marketed 5 involves a lot of work? 6 lower, the purchaser electing not to take on all 7 A. I've never seen it maintained that 7 those contracts? 8 way. 8 A. That could be a part of it. 9 Q. Have you seen, had experience with 9 Q. And did you go -- do you recall going 0 those estimates ending up being off by a wide in like meeting with the person at Office 10 1 margin? 11 Services or people at Offices Services that 2 12 A. Yes, both -- both on the trying to worked on this? 3 identify the pool and then by what ultimately a 13 A. Yes. Remember, he and his group were L 4 14 in a -- a different building, so I met him and purchaser might be able to negotiate to -- to 5 get these contracts assumed and assigned over. 15 his immediate boss on-site, and then I think I 16 6 Q. Is that, based on your experience in also met him over in the location where we were 17 17 the business, is it understood that these are housed. 8 fairly, you know, rough estimates and difficult 18 Actually, I've just remembered his 19 19 estimates to come up with? name. Terry Berman. 20 MR. TAMBE: Objection to the form of 20 Q. And so you're getting this on -- on 21 looks like the 19th, and you may not remember the question. 22 22 A. It's easier to know the -- it's the exact timeline or date, but just kind of 23 order of magnitude, you would have gotten this 23 difficult to work out the total potential 24 the 19th. When do you think you would have kind 24 exposure, but it's possible, and then from that 25 total exposure, it's typical for the actual 25 of gone over and met with these folks to get a Page 28 Page 29 1 D. Coles 1 D. Coles 2 sense of how this was calculated? 2 connection with this cure payment amount 3 3 A. Probably within seven days of generally, but also the process and also the 4 receiving this. process of providing the residual estate with 4 5 5 Q. So, okay, it could have been any time transitional services. б 6 in roughly that seven-day period? His group, for instance, would have 7 7 managed -- or, within that group in that A. Yes. 8 8 building, they managed the whole T & E Q. And then what else did you do? When you went over there, you met with them, you 9 9 reimbursement. So that's travel and 10 understood how they were trying to come up with 10 entertainment. And we needed to continue to 11 11 the number? operate systems as they had operated before and 12 12 A. Yes. keep employees in place to manage down the 13 O. Did you -- did you have any follow-up 13 assets, so it was important that we had a 14 14 after that with them? process by which we could determine who was an 15 15 A. Yes. And this group was also a group employee of the estate, who was an employee of 16 16 that I seem to recall we were very dependent on now of BarCap, and how we were going to settle 17 17 to -- to run our back office as the estate, out people's T & E, for instance. 18 18 Q. And when you got that sense of because so many of the systems and processes went across with BarCap that we, the residual 19 19 understanding of how they had calculated this 20 20 estate, needed a Transitional Services Agreement transaction adjustment for cure amounts, was --21 21 back with BarCap for BarCap to provide us with did -- did it seem like they had undergone a 22 reasonable process in trying to come up with 22 things that we were used to having and which were essential. 23 23 that amount to you, or did you have any further So my discussions with Terry and 24 24 questions or -people who work with Terry would have been in 25 MR. TAMBE: Objection to the form of

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	Page 30		Page 31
1	D. Coles	1	D. Coles
2	the question.	2	done, and then was there did you have any
3	A. I don't think I was in a position to	3	follow-up beyond that in terms of any further
4	know how thorough that was. I do remember	4	occasion to look in precisely how they had done
5	reflecting on the enormity of the task. I don't	5	the estimate in more details?
6	now remember how many contracts that comprised,	6	MR. TAMBE: Objection to the form of
7	but it I mean, Lehman was the biggest thing	7	the question.
8	that I think anybody had seen at that point in	8	A. I don't think I don't think I
9		9	myself didn't further explore the original
	terms of a company going through a bankruptcy at		
10	such short notice with such little planning.	10	estimate, but we did check in from time to time
11	Q. And would that be a short amount of	11	on how much had actually been incurred to assume
12	time, a couple of days to come up with the type	12	and assign contracts, and I remember that number
13	of estimate?	13	being very low relative to 1645. I seem to
14	A. I don't think so. I mean, this	14	recall it being around 300 million around the
15	this was presumably the the best they could	15	time that I left, which would have been in
16	come up with in two days. It can take a lot	16	mid-February.
17	longer than that.	17	Q. Did that and I guess the there
18	Q. I guess what I was asking, compared to	18	are two buckets of contracts Barclays would be
19	other situations, was	19	assuming. One was the Closing Date Contracts,
20	A. Yes.	20	which were actually listed prior to closing and
21	Q having just a couple days to come	21	were being assumed upon closing, and then
22	up with these estimates a shorter period of time	22	another bucket that they had 60 days to decide
23	than you've seen in other situations?	23	on whether to assume or not assume. Is that
24	A. That was very short.	24	consistent with your recollection?
25	Q. And so they explained what they had	25	A. That rings a bell.
	Page 32		Page 33
	Page 32		Page 33
1	D. Coles	1	D. Coles
2	D. Coles Q. And the initial bucket would have been	1 2	D. Coles all post-BAPCA, where you have 90 days sorry,
2	D. Coles Q. And the initial bucket would have been known, you know, as of closing in terms of the	1 2 3	D. Coles all post-BAPCA, where you have 90 days sorry, you have 210 days to assume or assign, and so I
2 3 4	D. Coles Q. And the initial bucket would have been known, you know, as of closing in terms of the amount of cure amounts being assumed, right?	1 2 3 4	D. Coles all post-BAPCA, where you have 90 days sorry, you have 210 days to assume or assign, and so I think I knew going in that there could be seven
2 3 4 5	D. Coles Q. And the initial bucket would have been known, you know, as of closing in terms of the	1 2 3 4 5	D. Coles all post-BAPCA, where you have 90 days sorry, you have 210 days to assume or assign, and so I think I knew going in that there could be seven months to determine whether or not the buyer
2 3 4	D. Coles Q. And the initial bucket would have been known, you know, as of closing in terms of the amount of cure amounts being assumed, right?	1 2 3 4	D. Coles all post-BAPCA, where you have 90 days sorry, you have 210 days to assume or assign, and so I think I knew going in that there could be seven months to determine whether or not the buyer chose to take on the contract and have the
2 3 4 5	D. Coles Q. And the initial bucket would have been known, you know, as of closing in terms of the amount of cure amounts being assumed, right? Does that sound familiar?	1 2 3 4 5	D. Coles all post-BAPCA, where you have 90 days sorry, you have 210 days to assume or assign, and so I think I knew going in that there could be seven months to determine whether or not the buyer
2 3 4 5 6	D. Coles Q. And the initial bucket would have been known, you know, as of closing in terms of the amount of cure amounts being assumed, right? Does that sound familiar? A. Well, they would have still been	1 2 3 4 5	D. Coles all post-BAPCA, where you have 90 days sorry, you have 210 days to assume or assign, and so I think I knew going in that there could be seven months to determine whether or not the buyer chose to take on the contract and have the estate cure it and have it assigned across to them.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	D. Coles Q. And the initial bucket would have been known, you know, as of closing in terms of the amount of cure amounts being assumed, right? Does that sound familiar? A. Well, they would have still been MR. TAMBE: Objection to the form of the question. You can answer. A. I think they would have still been estimates that were probably subject to a fair amount of negotiation with the with the vendor to determine whether that number was in fact that estimate was accurate and whether settling that amount would actually get the job done in the contract to assumed and assigned. Q. Were you surprised by how much lower the actual amount of cure assumed by Barclays was A. Yes.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	D. Coles all post-BAPCA, where you have 90 days sorry, you have 210 days to assume or assign, and so I think I knew going in that there could be seven months to determine whether or not the buyer chose to take on the contract and have the estate cure it and have it assigned across to them. So I, knowing that there was 210 days in there, I may not have fully understood quite what the 60-day batch of contracts was and how that fit into the 210 days, but I would have known from a legal perspective that they really had seven months to figure out whether to assume or assign and cure and, hence, we wouldn't know until the end of seven months what the real number was. Q. I'm sorry, you had Barclays had, even though the contract says Barclays has 60 days, to decide whether to assume or have Lehman
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2 3 4 5 6 7 8 9 1 1 1 2 1 1 1 1 1 1 1 1 1 1 1 1 1	D. Coles Q. And the initial bucket would have been known, you know, as of closing in terms of the amount of cure amounts being assumed, right? Does that sound familiar? A. Well, they would have still been MR. TAMBE: Objection to the form of the question. You can answer. A. I think they would have still been estimates that were probably subject to a fair amount of negotiation with the with the vendor to determine whether that number was in fact that estimate was accurate and whether settling that amount would actually get the job done in the contract to assumed and assigned. Q. Were you surprised by how much lower the actual amount of cure assumed by Barclays was A. Yes. Q compared to the estimate? And did that surprise cause you to	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 22 22 22 22 22 22 22 22 22 22 22	D. Coles all post-BAPCA, where you have 90 days sorry, you have 210 days to assume or assign, and so I think I knew going in that there could be seven months to determine whether or not the buyer chose to take on the contract and have the estate cure it and have it assigned across to them. So I, knowing that there was 210 days in there, I may not have fully understood quite what the 60-day batch of contracts was and how that fit into the 210 days, but I would have known from a legal perspective that they really had seven months to figure out whether to assume or assign and cure and, hence, we wouldn't know until the end of seven months what the real number was. Q. I'm sorry, you had Barclays had, even though the contract says Barclays has 60 days, to decide whether to assume or have Lehman assume and assign? A. I guess the 60 days would have been a
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2 3 4 5 6 7 8 9 1 1 1 2 1 1 1 1 1 1 1 1 1 1 1 1 1	D. Coles Q. And the initial bucket would have been known, you know, as of closing in terms of the amount of cure amounts being assumed, right? Does that sound familiar? A. Well, they would have still been MR. TAMBE: Objection to the form of the question. You can answer. A. I think they would have still been estimates that were probably subject to a fair amount of negotiation with the with the vendor to determine whether that number was in fact that estimate was accurate and whether settling that amount would actually get the job done in the contract to assumed and assigned. Q. Were you surprised by how much lower the actual amount of cure assumed by Barclays was A. Yes. Q compared to the estimate? And did that surprise cause you to	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 22 22 22 22 22 22 22 22 22 22 22	D. Coles all post-BAPCA, where you have 90 days sorry, you have 210 days to assume or assign, and so I think I knew going in that there could be seven months to determine whether or not the buyer chose to take on the contract and have the estate cure it and have it assigned across to them. So I, knowing that there was 210 days in there, I may not have fully understood quite what the 60-day batch of contracts was and how that fit into the 210 days, but I would have known from a legal perspective that they really had seven months to figure out whether to assume or assign and cure and, hence, we wouldn't know until the end of seven months what the real number was. Q. I'm sorry, you had Barclays had, even though the contract says Barclays has 60 days, to decide whether to assume or have Lehman assume and assign? A. I guess the 60 days would have been a

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	Page 34		Page 35
1	D. Coles	1	D. Coles
2	not a lawyer, so I'm not exactly sure how those	2	the T & E reimbursement area, and I don't now
3	two competing timeframes might interplay with	3	remember his name.
4	each other.	4	Q. And did you you discuss with each
5	Q. Do you recall that the, at or about	5	of them how they kind of went about coming up
6	the time of closing, the amount of Closing Date	6	with this, the estimate for the transaction
7	Contracts was first identified as approximately	7	adjustment for cure?
8	180 million and then a revised version was filed	8	MR. TAMBE: Objection to the form of
9	a little later that said 106 million,	9	the question.
10	approximately?	10	A. I don't think I actually ever asked
11		11	that question, but I I would have assumed
12	J J	12	that, and I did assume at the time, that they
13		<mark>13</mark>	knew what contracts Lehman was had signed and
14	Q. Okay. The, other than is it Mr.	<mark>14</mark>	was responsible for and that they had analyzed
15		<mark>15</mark>	that universe of contracts and attempted to
16		<mark>16</mark>	figure out what, if anything, was owed under
17	Q. =	<mark>17</mark>	them.
18	m, or , or m m m or	18	Q. And I had understood that that was
19		19	your understanding for what they had done to
20	2	20	come up with this number. I'm just wondering,
21	,	21	was that understanding based on discussions with
22	J 2 J 1	22	them or reviewing some written work they had
23	P w wp.	23	done, or what was that based on?
24	Q. 31111y.	24	MR. TAMBE: Objection to the form of
25	A. And there was an individual that ran	25	the question.
	Page 36		Page 37
1	D. Coles	1	D. Coles
2	A. Discussions with them.	2	A. Post-sale, to the extent those
3	Q. Okay.	3	individuals were now BarCap employees, it
4	A. I don't remember seeing the enormity	4	becomes a BarCap effort.
5	of this other listing, which I'm sure this	5	Q. Sure, but the estimate was created
6	represented, because I think this was being done	6	preclosing, right? And here it is on a document
7	online perhaps by Epiq, and it involved a lot of	7	entitled "Balance Sheet As of September 17,
8	scanning of contracts. And then someone, be it	8	2008."
9	Epiq or Lehman/BarCap, was trying to estimate	9	So we're talking about preclosing.
10	what would have needed to be paid to cure these	10	When we're talking about the estimate, the
11		11	transaction adjustment, the estimate of maximum
12		12	potential exposure, we're talking about
13	E	13	preclosing work, right?
14	1 7	14	A. Yes. In those early days getting a
15		15	good read of quite who you were working with was
16		16	a little difficult.
17		17	Q. But in the preclosing days, you're not
18		18	aware of any, any involvement by anyone from
19		19	Barclays in that estimating process; is that
20		20	correct?
21	•	21 22	A. I'm not, but I'd be surprised if someone from Barclays hadn't taken a look at
	nagagarily have to be a Lahman's affant?		Someone from Parcials hadn Fraken a look at
22	· · · · · · · · · · · · · · · · · · ·		
22 23	MR. TAMBE: Objection to the form of	23	that and got comfortable that that was a a
22	MR. TAMBE: Objection to the form of the question. When was it a Lehman's		

D. Coles A. Imean, if I was Barclays, I would want that number to be as high as possible. Q. Well, do you have - did you have any) discussions with Barclays about any involvement in in estimating that number? A. No. Q. And just to be clear, you're not aware that anyone from Barclays was involved in coming up with that estimate? A. No. Q. Okay. And if in fact this contract have you had contracts have you been involved in coming that once the purchaser was actually committing to assume a certain amount of lability committing to assume a certain amount of lability and the result of the business, where the employee liabilities, for instruction and in Finlay, that we have in Finlay, if, for in finlay, that we have in Finlay, if, for in finlay, that we have in Finlay, if, for in finlay, that we have in Finlay, if, for in finlay, that we have in Finlay, if, for in finlay, that we have in Finlay, if, for in finlay, that we have in Finlay, if, for in finlay, that we have in Finlay, if, for in finlay, that we have in Finlay, if, for in finlay, that we have in Finlay, that we have in Finlay, if, for in finlay, that we have in Finlay, if, for in finlay, that we have in Finlay, if, for in finlay, that we have in Finlay, if, for in finlay, that we have in Finlay, that we have in Finlay, if, for in the stimate? A. No. Q. Okay. And if in fact this contract lave to the understand the stimate that the stimate that the spart is a function of the written contract that two sophisticated lave the committing to assume a certain amount of labilities, or for instance, might be a million dollars and the 25 going to he, but when you're trying to compare the understand that, from reading around the topic, that that party is liable for that. D. Coles the question. Page 40 D. Coles the question. Page 4 D. Coles the question. Page 4 D. Coles the question. A. Yes. MR. TAMBE: Objection to the form of dediligence, angotiate a contract, and then close, but these were, you know, the circumstances, is if your under	D. Coles A. I mean, if I was Barclays, I would want that number to be as high as possible. Q. Well, do you have — did you have any discussions with Barclays about any involvement in estimating that number? A. No. Q. And just to be clear, you're not aware that anyone from Barclays was involved in coming up with that estimate? A. No. Q. Okay. And if in fact this contract — 12 have you had contracts — have you been involved in contracts where the purchaser was actually committing to assume a certain amount of liabilities? A. Yes. Q. Okay. Is that common? A. Yes. In fact, that's the situation with Finlay with a very small go-forward part of the business, where the employee liabilities, or instance, might be a million dollars and the purchaser is on the hook for a minimum of 625. So, from your perspective, your earlier comment about, you know, assumed liabilities being part of consideration, that's in a situation where the purchaser agrees to pay a certain yof number, with a mechanism whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know wher		Pg 11	ר וט	-JT
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A I mean, if I was Barclays, I would want that number to be as high as possible. Q Well, do you have did you have any discussions with Barclays about any involvement in estimating that number? A No. Q And just to be clear, you're not aware that anyone from Barclays was involved in coming up with that estimate? A No. Q Nay, And if in fact this contract have you had contracts have you been involved in contracts where the purchaser was actually committing to assume a certain amount of liability; A Yes. Q Okay, Is that common? A Yes. R Q Okay, Is that common? A Yes. R Q Okay, Is that common? A Yes. C G what happens if the estimates turn out Page 40 D Coles the question. A I think it's also a solution to not being exactly clear what the ultimate number is going to be, but when your trying to compare the virtue of one offer has got a going concern component to it with an assumption of liabilities, you need to be able to, despite not having a certainty of number, with a mechanism that that party is liable for that. Q And you've seen this drafted up in contracts before, correct? A Yes. C O what so this is something that to be high and the actual amount incurred turned out to be lower? A Well, with that mechanism that we had in Finlay, that we have in Finlay, if, for instance, it's going to happen, I think, the purchaser ultimately takes more like 400,000 of liabilities go in to happen, I think, the purchaser limitately takes more like 400,000 of liabilities on. It will have to pay the estate the top-up to the minimum of 625. So it'll actually go out-of-pocket and write the estate a check for 225,000. A Yes. Q - parties entered? Yes? A Yes. C parties entered? Yes? A Yes. B O Coles The business, where the employee liabilities, in a situation where the purchaser agrees to pay a certain amount of liability, correct? A Yes. MR. TAMBE: Objection to the form of B D. Coles the question. A Very complex transaction, and I understand that, from reading around the topic, that that party is liable for that. Q And	A. Imean, if I was Barclays, I would want that number to be as high as possible. Q. Well, do you have — did you have any discussions with Barclays about any involvement in estimating that number? A. No. Q. And just to be clear, you're not aware that anyone from Barclays was involved in coming up with that estimate? A. No. Q. Okay. And if in fact this contract — law you been involved in contracts where the purchaser was actually committing to assume a certain amount of liabilities Q. Okay. Is that common? A. Yes. D. Coles the question. A. I think it's also a solution to not being exactly clear what the ultimate number is going to be, but when you're trying to compare the virtue of one offer against another offer, and if one offer has got a going concern component to it with an assumption of liabilities, you need to be able to, despite not having a certainty of number, with a mechanism whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know whereby you say you have to take a minimum X, at least you can put X in your analysis and know that that party is liable for that. Q. And you've seen this drafted up in contracts	1	D. Coles	1	D. Coles
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Q. And so this is something that To given the uncertainty associated with assets and	Q. And so this is something that sophisticated contract attorneys and advisors can contract for? A. In in a normal negotiation where there's time to negotiate, yes. Q. Did you think that there was not time 17 given the uncertainty associated with assets and liabilities? 18 liabilities? 19 MR. TAMBE: Objection to the form of the question. Foundation. 20 A. I'm not sure that the risk was equally kind of spread between both parties. I think	15	contracts before, correct?	15	
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	can contract for? A. In in a normal negotiation where there's time to negotiate, yes. Q. Did you think that there was not time MR. TAMBE: Objection to the form of the question. Foundation. A. I'm not sure that the risk was equally kind of spread between both parties. I think	17	Q. And so this is something that	17	given the uncertainty associated with assets and
1 •	A. In in a normal negotiation where there's time to negotiate, yes. 21 there's time to negotiate, yes. 21 A. I'm not sure that the risk was equally 22 Q. Did you think that there was not time 22 kind of spread between both parties. I think	18	_	18	liabilities?
	there's time to negotiate, yes. 21 A. I'm not sure that the risk was equally 22 Q. Did you think that there was not time 22 kind of spread between both parties. I think	19	can contract for?	19	
A. In in a normal negotiation where 20 the question. Foundation.	Q. Did you think that there was not time 22 kind of spread between both parties. I think	20	A. In in a normal negotiation where	20	the question. Foundation.
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•	23 to draft up that contract language in the 23 the the buyer could through mechanisms such				• •
23 to draft up that contract language in the 23 the the buyer could, through mechanisms such					· · · · · · · · · · · · · · · · · · ·
Barclays transaction? 24 as this, by having some healthy estimates which		24	Barclays transaction?	24	as this, by having some healthy estimates which
	and the control of th	25	MR. TAMBE: Objection to the form of	25	reduced the ultimate purchase consideration,
	MD TAMPE. Objection to the form of DE medical the ultimate numbers and identified	<u> </u>	MK. I AMBE: Objection to the form of	ŁΟ	reduced the ultimate purchase consideration,

Page 46 Page 47 1 D. Coles D. Coles 1 2 2 any way? Q. But do you recall that conversation or 3 MR. TAMBE: Objection to form and 3 are you just assuming? 4 4 A. I'm pretty confident I would have had 5 5 that conversation. A. My office was next door to Jim 6 Fogarty's. As I mentioned, Jim Fogarty, who was 6 Q. And do you know when you would have 7 COO, had also been tasked with or had been 7 had -- or, when you had that conversation? 8 tasked with watching this transaction through 8 A. Well, I think that, for the number to 9 the closing, and then I know that he did some 9 have become concrete, it would have been -- it 10 deep analysis into the Cusips for the securities 10 sounds like it would have been 60 days in, so 11 that were transferred and he continued to just 11 sometime after the 60-day limit after the 12 12 analyze the transaction generally. closing. 13 I am fairly confident that, through my 13 O. Would the fact that the cure amounts 14 interaction with Terry Berman and a knowledge 14 for the contract of the Closing Date Contracts, 15 that the cure amount was ultimately more like 15 would the fact that they were less than 200 16 300, and perhaps I knew that 60 days in because 16 million have caused you any concern or 17 17 of the 60-day, if I haven't asked you to cure it questioning? and assume and assign it, I'm not ultimately 18 18 MR. TAMBE: Objection to the form of 19 19 going to be able to, and that was an agreement the question. 20 between the parties that trumped the code, I'm 20 A. I don't think I would have known how 21 pretty confident that I would have had a 21 the 200 related to what they might have been on 22 22 conversation with Jim about that and would have this list at 1645 as. I think if they were at a 23 23 recognized that the way the contract was substantial discount from what they were those 24 written, that was a substantial pickup to the 24 particular contracts were in this 1645, that 25 purchaser compared with the estimate. 25 could have alerted me to it looks like this Page 48 Page 49 1 D. Coles 1 D. Coles 2 2 number ultimately is going to be much, much less amount for accounts payable. Those are amounts 3 than 1645 and here's the first wave of them. 3 due to third parties for the provision of goods 4 and services that haven't been paid for as of 4 Q. Do you know if -- do you know if you 5 5 tried to figure that out? the date of that balance sheet. It's not 6 6 A. I don't think I knew that number. I typical in a going concern balance sheet to have 7 7 anything on -- included there for cure payment, don't recall knowing that number. 8 8 Q. Okay. Do you recall the -- that the for instance. 9 Closing Date Contracts were actually listed 9 So I would have read "cure 10 prior to closing? 10 payments/accounts payable" to mean that, in the A. No. 11 1 1 case of these two estimated period-end balance Q. Do you know one way or the other, or 12 12 sheets, these first two columns, 831 and 917, 13 you just don't recall? 13 that that relates to an accounts payable 14 14 balance, and that the "Cure Payments" A. I don't recall. 15 Q. On the -- the transaction adjustment, 15 description applies to the "Transaction 16 16 Adjustment" amount that's further into the 1645, on the left you have these amounts in the 17 17 columns, 831, 917, do you see those, 701? spreadsheet. 18 A. Yes. 18 And I would have also known from 19 Q. What is -- what is your understanding 19 experience that companies, unless they have had 20 20 of what those would be and why they would be quite a lot of time after the date of a close 21 increased by a transaction adjustment? for a balance sheet, find it very difficult to MR. TAMBE: Objection to the form of 22 estimate what their accruals and liabilities are 23 the question. Foundation. 23 because often those amounts aren't known until a 24 24 A. What would be typical in a balance vendor sends an invoice at, let's say, the end

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sheet is that the balance sheet would include an

of the month.

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	Page 50		Page 51
1	D. Coles	1	D. Coles
2	And here we have a stub period that	2	provide IT support. There may be the monthly
3	ends at the on the 17th. It's even more	3	amount might be outstanding, so at the end of
4	difficult because you may end up having to	4	August, for instance, you might owe August's
5	apportion an invoice that is for a longer	5	bill of \$10 million, but that if you wanted to
6	period.	6	ultimately cure that contract, there may be
7	Q. At any point did you have occasion to	7	something in that contract that says something
8	confirm that the the amounts in the left	8	whereby you would have to pay more than that 10
9	column, the 701, 605, were not capturing all	9	million to take on the contract or less than
10		10	that 10 million.
11	cure payments?	11	
	MR. TAMBE: Objection. Objection to		Q. And is that situation consistent with
12	the form of the question.	12	your discussion with the Office Services folks?
13	A. No.	13	MR. TAMBE: Objection to the form of
14	Q. Okay. Just so I understand you, when	14	the question. Is what situation consistent?
15	you say you assume there were more in terms of	15	A. I don't remember having those that
16	accounts payable, that means is it more current	16	specific a discussion.
17	amounts owed?	17	Q. I'm going to show you a document we'll
18	A. Can you rephrase that?	18	mark as 585A.
19	Q. You draw a distinction between kind of	19	(Exhibit 585A, an e-mail from K. Wong
20	the accounts payable aspect of it and the cure	20	to M. Stewart and L. Chiu dated September
21	aspect of it	21	22, 2008, marked for identification, as of
22	A. Yes.	22	this date.)
23	Q in explaining why there would be	23	Q. Do you recognize this chain involving
24	A. Right. Let's give an example.	24	yourself and others on September 22, 2008?
25	Perhaps you have a contract for services to	25	A. I don't remember this specific e-mail,
	Page 52		Page 53
1	Page 52 D. Coles	1	Page 53 D. Coles
2	D. Coles but I recognize these names with the exception	1 2	D. Coles A. It's typical for a company to run a
2	D. Coles but I recognize these names with the exception of Brett Beldner.	1 2 3	D. Coles A. It's typical for a company to run a trial balance or a general ledger account
2 3 4	D. Coles but I recognize these names with the exception of Brett Beldner. Q. The original in time e-mail from Marie	1 2 3 4	D. Coles A. It's typical for a company to run a trial balance or a general ledger account structure, and knowing that the knowing now
2 3 4 5	D. Coles but I recognize these names with the exception of Brett Beldner. Q. The original in time e-mail from Marie Stewart, who is Marie Stewart?	1 2 3 4 5	D. Coles A. It's typical for a company to run a trial balance or a general ledger account structure, and knowing that the knowing now that Barclays purchased the infrastructure, I
2 3 4	D. Coles D. Coles but I recognize these names with the exception of Brett Beldner. Q. The original in time e-mail from Marie Stewart, who is Marie Stewart? A. I think she was S.E.C. reporting for	1 2 3 4	D. Coles A. It's typical for a company to run a trial balance or a general ledger account structure, and knowing that the knowing now that Barclays purchased the infrastructure, I wanted to make sure that it was capable of
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	D. Coles but I recognize these names with the exception of Brett Beldner. Q. The original in time e-mail from Marie Stewart, who is Marie Stewart? A. I think she was S.E.C. reporting for Lehman and then moved across to BarCap. Q. Her e-mail subject, "David Coles of A&M needs to talk to you at 4 P.M. today about GL structure, et cetera. He wants to get a handle on Remain Co. and what Barclays need too." Is that consistent with your recollection of some of the work you were trying to get a handle on what assets and liabilities had gone over and what assets and liabilities remained with Lehman that you were going to be responsible for? A. Yes.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	D. Coles A. It's typical for a company to run a trial balance or a general ledger account structure, and knowing that the knowing now that Barclays purchased the infrastructure, I wanted to make sure that it was capable of continuing to maintain and report to us a statement of its assets, liabilities, P&L and cash flow going forward. Because we were very reliant on Barclays because all of that backbone, if you will, went across to Barclays as part of the transaction, yet we were responsible for a significant number of assets and value of assets and needed to be able to first understand what we were responsible for and then slowly monetize those assets. Q. And did you have fairly regular
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	D. Coles but I recognize these names with the exception of Brett Beldner. Q. The original in time e-mail from Marie Stewart, who is Marie Stewart? A. I think she was S.E.C. reporting for Lehman and then moved across to BarCap. Q. Her e-mail subject, "David Coles of A&M needs to talk to you at 4 P.M. today about GL structure, et cetera. He wants to get a handle on Remain Co. and what Barclays need too." Is that consistent with your recollection of some of the work you were trying to get a handle on what assets and liabilities had gone over and what assets and liabilities remained with Lehman that you were going to be responsible for? A. Yes. Q. And on the top of that, Kristy Wong writes, "Just spoke to him. He just wants to be	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	D. Coles A. It's typical for a company to run a trial balance or a general ledger account structure, and knowing that the knowing now that Barclays purchased the infrastructure, I wanted to make sure that it was capable of continuing to maintain and report to us a statement of its assets, liabilities, P&L and cash flow going forward. Because we were very reliant on Barclays because all of that backbone, if you will, went across to Barclays as part of the transaction, yet we were responsible for a significant number of assets and value of assets and needed to be able to first understand what we were responsible for and then slowly monetize those assets. Q. And did you have fairly regular correspondence or communications with Kristy Wong in this time period? A. Yes. MR. TAMBE: Objection to the form of
2 3 4 5 6 7 8 9 1 1 1 2 1 1 1 1 1 1 1 1 1 1 1 1 1	D. Coles but I recognize these names with the exception of Brett Beldner. Q. The original in time e-mail from Marie Stewart, who is Marie Stewart? A. I think she was S.E.C. reporting for Lehman and then moved across to BarCap. Q. Her e-mail subject, "David Coles of A&M needs to talk to you at 4 P.M. today about GL structure, et cetera. He wants to get a handle on Remain Co. and what Barclays need too." Is that consistent with your recollection of some of the work you were trying to get a handle on what assets and liabilities had gone over and what assets and liabilities remained with Lehman that you were going to be responsible for? A. Yes. Q. And on the top of that, Kristy Wong writes, "Just spoke to him. He just wants to be in the loop on how we are segregating assets	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	D. Coles A. It's typical for a company to run a trial balance or a general ledger account structure, and knowing that the knowing now that Barclays purchased the infrastructure, I wanted to make sure that it was capable of continuing to maintain and report to us a statement of its assets, liabilities, P&L and cash flow going forward. Because we were very reliant on Barclays because all of that backbone, if you will, went across to Barclays as part of the transaction, yet we were responsible for a significant number of assets and value of assets and needed to be able to first understand what we were responsible for and then slowly monetize those assets. Q. And did you have fairly regular correspondence or communications with Kristy Wong in this time period? A. Yes. MR. TAMBE: Objection to the form of the question.
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2 3 4 5 6 7 8 9 1 1 1 2 1 1 1 1 1 1 1 1 1 1 1 1 1	D. Coles but I recognize these names with the exception of Brett Beldner. Q. The original in time e-mail from Marie Stewart, who is Marie Stewart? A. I think she was S.E.C. reporting for Lehman and then moved across to BarCap. Q. Her e-mail subject, "David Coles of A&M needs to talk to you at 4 P.M. today about GL structure, et cetera. He wants to get a handle on Remain Co. and what Barclays need too." Is that consistent with your recollection of some of the work you were trying to get a handle on what assets and liabilities had gone over and what assets and liabilities remained with Lehman that you were going to be responsible for? A. Yes. Q. And on the top of that, Kristy Wong writes, "Just spoke to him. He just wants to be in the loop on how we are segregating assets	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	D. Coles A. It's typical for a company to run a trial balance or a general ledger account structure, and knowing that the knowing now that Barclays purchased the infrastructure, I wanted to make sure that it was capable of continuing to maintain and report to us a statement of its assets, liabilities, P&L and cash flow going forward. Because we were very reliant on Barclays because all of that backbone, if you will, went across to Barclays as part of the transaction, yet we were responsible for a significant number of assets and value of assets and needed to be able to first understand what we were responsible for and then slowly monetize those assets. Q. And did you have fairly regular correspondence or communications with Kristy Wong in this time period? A. Yes. MR. TAMBE: Objection to the form of the question.

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	Page 54		Page 55
1	D. Coles	1	D. Coles
2	providing you information?	2	document we'll mark as 586A.
3	A. Four out of ten.	3	(Exhibit 586A, a document bearing
4	Q. Is that good or bad in your	4	Bates Nos. BCI-EX-(S)-6332 through 6340,
	experiences?	5	marked for identification, as of this date.)
56	A. It was it was pretty bad, but we	6	Q. Do you recognize this as an e-mail
7	we all recognized that they had probably put in	7	from yourself dated September 24, 2008?
8	some really long days in the run-up to the	8	A. I do.
9	filing and then after the filing, and that their	9	Q. And did you draft notices or
10		10	correspondence to vendors to try to explain the
11		11	Barclays transaction in terms of Barclays having
12		12	the election of assuming or not assuming certain
13		13	contracts?
14	Santa I	13 14	
15			A. I think I did. I mean, this e-mail
	1 1 2	15	references a vendor letter and talking points.
16		16	Those would be standard operating procedure for
17	8-1-1-1	17	us in a situation like this.
18		18	Q. Uh-huh.
19		19	A. I don't recall the exact content.
20 21		20	Q. And if you would look at the
		21	attachments there, there's a Bates number at the
22		22	bottom right 6335, you have "Vendor Inquiries."
23		23	Do you see that?
24		24	A. Yes.
25	Q. Let me go ahead and show you a	25	Q. Okay. And then it's the draft letter
	Page 56		Page 57
1	D. Coles	1	D. Coles
2	that's on 6339?	2	Q. Okay. At the time, you would have, if
3	A. Yes.	3	that's the case, that it was 60 days, at the
4	Q. And on the following page, 6340,	4	time you likely would have known it?
5	second sentence at the top, "While the contracts	5	A. I think so.
6	assumed at closing assumes the agreements	6	Q. And did the on the second page of
7	initially identified by Barclays, Barclays also	7	this, which is 6336, second page of the Vendor
8	has the option to assume further agreements and	8	Inquiries, there's a Website given there, the
9	liabilities for 60 days following the close of	9	Epiq Systems?
10	•	10	A. Yes.
	, , , , , , , , , , , , , , , , , , ,	11	
11	8		Q. Does that refresh your recollection
12	, 1	12	that it was
13		13	A. Yes.
14	I .	14	Q hosted by Epiq?
15	3	15	And do you recall whether the Website
16	J in the state of	16	actually showed up to date which contracts
17		17	Barclays had assumed and the cure amounts for
18		18	those contracts?
19	J	19	A. I believe that was its purpose. I'm
20		20	not sure I visited it to explore that.
	minute alogius as Clasius Data Contracts?	21	MR. THOMAS: Okay. Are you doing okay
21			
21 22	MR. TAMBE: Objection to the form of	22	break-wise? Do you want a short break or do
21	MR. TAMBE: Objection to the form of the question.	23	you want to keep going?
21 22	MR. TAMBE: Objection to the form of the question.		-

Page 58 Page 59 1 D. Coles D. Coles 1 2 MR. THOMAS: We're moving along really 2 O. And you have no reason to, if others 3 3 recall that you were there, you have no reason good. to doubt that you were at this meeting? 4 4 THE WITNESS: Okay. 5 MR. THOMAS: It's only the dark blue 5 A. Correct. 6 Q. And do you recall the purpose of the tabs. 7 7 THE WITNESS: If anyone else needs a meeting? 8 break, that's fine. You want five minutes? 8 A. No. 9 9 MR. THOMAS: If everyone's okay, we'll Q. And just to be clear, putting aside 10 .0 keep going. that you can't definitively say these notes are 11 MR. TAMBE: We can keep going. 11 of that meeting --12 Q. Let me show you a document we marked 12 A. Right. 13 this morning -- actually, marked previously as 13 -- you do remember such a meeting in 14 563B. These aren't your notes. They're Ms. 14 this general timeframe? 15 Korycki's notes of a meeting. 15 A. I remember a meeting with -- I mean, My question to you is, do you recall 16 16 I've been at a meeting with those individuals. 17 attending a meeting on or about September 29, 17 Whether this was the topic, I'm not sure. This 2008 with folks from Alvarez, Weil Gotshal and a 18 18 might well have been the meeting that Jim 19 couple Lehman or former Lehman executives, Paolo 19 Fogarty really tried to take the lead on. 20 Tonucci and Alex Kirk, to discuss the details of 20 If it is, it would have also had Bill 21 the Barclays transaction? 21 Fox at this meeting, and the main thrust of that 22 A. I recall meeting with those types of 22 meeting, if this is the one, and if I was at it, 23 players. Whether I was at this one on the 29th, 23 I think was a lot to do with the Cusips, which 24 I'm not sure. Paolo was a difficult person to 24 was the security side of things. 25 track down. 25 Q. The repo collateral that was Page 60 Page 61 1 D. Coles 1 D. Coles 2 2 transferred -gave or was to give \$45 billion in cash in 3 3 return for getting securities that were marked A. Yes. Q. -- over to Barclays? 4 4 at roughly in the \$49.7 billion range? 5 5 A. Yes. MR. TAMBE: Object to form. 6 6 Q. I think there was testimony that there A. Generally, yes. 7 were other people from Alvarez & Marsal at this 7 O. Do you recall in this meeting a meeting, and I think it includes Bill Fox, but 8 8 description of the assets that were conveyed to 9 9 Barclays as part of the sale transaction? I'd have to check that. 10 10 I'm not going to go through a lot of A. I seem to remember either it existing 11 detail on these notes, but do you recall 11 at that meeting or being produced pretty shortly 12 generally that Lehman had a repo agreement with 12 thereafter a very thick wad of paper that was 13 the Fed shortly after bankruptcy and the Fed 13 the Cusip listing of these securities. I 14 asked Barclays to step into that repo agreement 14 remember that living in Jim Fogarty's office for 15 essentially so the Fed could get out of it? 15 a long time. 16 MR. TAMBE: Objection to the form of 16 Q. Do you remember also getting a 17 the question. 17 detailed description from Weil Gotshal as to 18 18 what of the assets that went over as part of the A. Generally, Generally, yes. 19 Q. Looking at page 4889, do you recall at 19 deal and what stayed? 20 this meeting, which you may or may not have been 20 MR. TAMBE: Objection to the form of 21 at which may or may not have been led by Mr. 21 the question. 22 Fogarty, do you recall there being a flip sheet 22 A. I don't recall. 23 resembling the chart at the top of 4889? 23 Q. Do you recall -- do you know who Lori 24 A. I don't. 24 Fife -- sorry. Go ahead. A. I did -- I did have conversations Q. Do you recall generally that Barclays 25

	Fy 10		
	Page 62		Page 63
1	D. Coles	1	D. Coles
2	along those lines with Rod Miller. I didn't	2	A. No. I remember having a certain
3	have conversations with Lori Fife.	3	degree of relief that this was all in Jim
4	Q. Do you know if Lori Fife was on the	4	Fogarty's work stream.
5	phone for this meeting?	5	Q. Okay. Let me ask you to turn to page
6	A. I don't recall that. I don't think	6	4890. Do you recall there being an issue that
7	anybody was on the phone.	7	not all of the 45 billion not all of the
8	Q. Do you recall Rod Miller was at the	8	assets that Barclays was supposed to be
9	meeting?	9	receiving being received because of something
10	A. I don't, but I wouldn't be I	10	JPM did with respect to 7 billion of the 45
11	wouldn't be surprised if he had been there.	11	billion?
12		12	MR. TAMBE: Objection to form.
13		13	A. Yes, but I don't think as a result of
14	information about the sale transaction?	14	this meeting I might have been at. I think from
15	A. Yes.	15	just general discussion with colleagues after
16	Q. Do you recall that, as part of the	16	the fact, and I do remember that it seemed as
17		17	
18		† ′ 18	though that listing of securities was a bit of a
19		19	moving target.
20			Q. That the securities that there was
		20	a list of Fed repo securities, but that the
21 22	- •	21	securities that actually went over to Barclays
22	•	22	were different than that list?
23	11 .	23	MR. TAMBE: Objection to the form of
24		24	the question. Mischaracterizes his
25	part of the sale transaction?	25	testimony. Foundation.
	Page 64		Page 65
1	D. Coles	1	D. Coles
2	A. I think it was more that there was	2	bankruptcy filing, do you know whether the marks
3	quite a delay from us being informed that there	3	on the company's securities were being updated
4	was 45 billion in securities that it took a	4	daily?
5			
	while to actually get that fishing to the out to	5	MR. TAMBE: Objection to form.
6	while to actually get that listing to tie out to 45 billion in securities.	5	MR. TAMBE: Objection to form. Foundation.
	45 billion in securities.		Foundation.
7	45 billion in securities. It seemed as though some of the		Foundation. A. I don't. I don't know.
7 8	45 billion in securities. It seemed as though some of the documentation was being prepared after the fact	6 7 8	Foundation. A. I don't. I don't know. Q. Looking on 4890, almost near the
7 8 9	45 billion in securities. It seemed as though some of the documentation was being prepared after the fact to support something, and that in itself	6 7 8 9	Foundation. A. I don't. I don't know. Q. Looking on 4890, almost near the bottom, there's a note there that says, "Paid
7 8 9 10	45 billion in securities. It seemed as though some of the documentation was being prepared after the fact to support something, and that in itself isn't might have surprised me at the time,	6 7 8 9	Foundation. A. I don't. I don't know. Q. Looking on 4890, almost near the bottom, there's a note there that says, "Paid 38," I think it's 38 billion, "cash to buy 42.9
7 8 9 10 11	45 billion in securities. It seemed as though some of the documentation was being prepared after the fact to support something, and that in itself isn't might have surprised me at the time, but in retrospect, doesn't surprise me now	6 7 8 9 10 11	Foundation. A. I don't. I don't know. Q. Looking on 4890, almost near the bottom, there's a note there that says, "Paid 38," I think it's 38 billion, "cash to buy 42.9 billion Lehman assets." It says, "Value
7 8 9 10 11 12	45 billion in securities. It seemed as though some of the documentation was being prepared after the fact to support something, and that in itself isn't might have surprised me at the time, but in retrospect, doesn't surprise me now because of the distress the organization was	6 7 8 9 10 11	Foundation. A. I don't. I don't know. Q. Looking on 4890, almost near the bottom, there's a note there that says, "Paid 38," I think it's 38 billion, "cash to buy 42.9 billion Lehman assets." It says, "Value different valuation, 5.1," and then under "42.9"
7 8 9 10 11 12	45 billion in securities. It seemed as though some of the documentation was being prepared after the fact to support something, and that in itself isn't might have surprised me at the time, but in retrospect, doesn't surprise me now because of the distress the organization was going through and all of the stress that the	6 7 8 9 10 11 12	Foundation. A. I don't. I don't know. Q. Looking on 4890, almost near the bottom, there's a note there that says, "Paid 38," I think it's 38 billion, "cash to buy 42.9 billion Lehman assets." It says, "Value different valuation, 5.1," and then under "42.9 billion" it says "38," which should be 38
7 8 9 10 11 12 13	45 billion in securities. It seemed as though some of the documentation was being prepared after the fact to support something, and that in itself isn't might have surprised me at the time, but in retrospect, doesn't surprise me now because of the distress the organization was going through and all of the stress that the Treasury and Liquidity Team was being put	6 7 8 9 10 11 12 13	Foundation. A. I don't. I don't know. Q. Looking on 4890, almost near the bottom, there's a note there that says, "Paid 38," I think it's 38 billion, "cash to buy 42.9 billion Lehman assets." It says, "Value different valuation, 5.1," and then under "42.9 billion" it says "38," which should be 38 billion.
7 8 9 10 11 12 13 14	45 billion in securities. It seemed as though some of the documentation was being prepared after the fact to support something, and that in itself isn't might have surprised me at the time, but in retrospect, doesn't surprise me now because of the distress the organization was going through and all of the stress that the Treasury and Liquidity Team was being put through in the days before the filing and	6 7 8 9 10 11 12 13 14	Foundation. A. I don't. I don't know. Q. Looking on 4890, almost near the bottom, there's a note there that says, "Paid 38," I think it's 38 billion, "cash to buy 42.9 billion Lehman assets." It says, "Value different valuation, 5.1," and then under "42.9 billion" it says "38," which should be 38 billion. Do you recall at this meeting there
7 8 9 10 11 12 13 14 15 16	45 billion in securities. It seemed as though some of the documentation was being prepared after the fact to support something, and that in itself isn't might have surprised me at the time, but in retrospect, doesn't surprise me now because of the distress the organization was going through and all of the stress that the Treasury and Liquidity Team was being put through in the days before the filing and immediately after the filing.	6 7 8 9 10 11 12 13 14 15 16	Foundation. A. I don't. I don't know. Q. Looking on 4890, almost near the bottom, there's a note there that says, "Paid 38," I think it's 38 billion, "cash to buy 42.9 billion Lehman assets." It says, "Value different valuation, 5.1," and then under "42.9 billion" it says "38," which should be 38 billion. Do you recall at this meeting there being a discussion of a difference in valuation
7 8 9 10 11 12 13 14 15 16 17	45 billion in securities. It seemed as though some of the documentation was being prepared after the fact to support something, and that in itself isn't might have surprised me at the time, but in retrospect, doesn't surprise me now because of the distress the organization was going through and all of the stress that the Treasury and Liquidity Team was being put through in the days before the filing and immediately after the filing. Q. Are you referring to the to the	6 7 8 9 10 11 12 13 14 15 16	Foundation. A. I don't. I don't know. Q. Looking on 4890, almost near the bottom, there's a note there that says, "Paid 38," I think it's 38 billion, "cash to buy 42.9 billion Lehman assets." It says, "Value different valuation, 5.1," and then under "42.9 billion" it says "38," which should be 38 billion. Do you recall at this meeting there being a discussion of a difference in valuation or a question of valuation, proper valuation,
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7 8 9 10 11 13 14 15 16 17 18 19 20 21	It seemed as though some of the documentation was being prepared after the fact to support something, and that in itself isn't might have surprised me at the time, but in retrospect, doesn't surprise me now because of the distress the organization was going through and all of the stress that the Treasury and Liquidity Team was being put through in the days before the filing and immediately after the filing. Q. Are you referring to the to the list as Exhibits A and B that were eventually filed with the court? MR. TAMBE: Objection to the form of the question. A. I don't recall that level of detail. Q. Do you know you spoke of distress to the company during this period of time.	6 7 8 9 10 11 12 13 14 15 16 17 18 18 19 20 12 21 22	Foundation. A. I don't. I don't know. Q. Looking on 4890, almost near the bottom, there's a note there that says, "Paid 38," I think it's 38 billion, "cash to buy 42.9 billion Lehman assets." It says, "Value different valuation, 5.1," and then under "42.9 billion" it says "38," which should be 38 billion. Do you recall at this meeting there being a discussion of a difference in valuation or a question of valuation, proper valuation, for the assets that came over to Barclays? MR. TAMBE: Objection to the form of the question and foundation. A. I think I do recall being aware of that difference in valuation. Whether I became

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	Page 66		Page 67
1	D. Coles	1	D. Coles
2	flashing up on the board. You can see that the	2	about the difference between the 43 billion
3	lights are flashing, but you've got no idea what	3	number and the \$38 billion number and the \$5
4	it really means.	4	billion valuation difference?
5		5	
	Q. At some point did you have an		MR. TAMBE: Objection to the form of
6	understanding that the valuation difference	6	the question.
7	arose because when securities that were marked	7	MR. SHELLEY: Objection to form.
8	as about \$43 billion were transferred to	8	A. Very little, other than that
9	Barclays, Barclays looked at them and said,	9	difference between 5 billion relating to marks.
10	"This isn't worth \$43 billion. We think it's	10	Q. Do you recall attending a presentation
11	worth more like \$38 billion"?	11	to the Creditors Committee on October 8 that
12	MR. TAMBE: Objection to the form of	12	included a description of that difference?
13	the question.	13	A. No, but if that that was probably
14	MR. SHELLEY: Objection to the form of	14	our first Creditors Committee meeting, and I
15	the question.	15	certainly attended that and presented, and it
16	A. You're educating me at this point.	16	could well have been in that book.
17		17	Q. Turning turning the page to 4891,
18	about the difference, the valuation difference	18	and under "Assets" do you see where it says "38
19	between the 43 billion and the 38 billion and	19	billion," then the "5 billion"?
20	the \$5 \$5 billion	20	A. Yes.
21	MR. TAMBE: Objection to the form of	21	Q. And then the "43 billion." Does that
22	the question and foundation.	22	refresh your recollection of the description of
23	MR. THOMAS: There is no question.	23	that difference at this meeting?
24	MR. TAMBE: Finish your question.	24	MR. TAMBE: Objection to the form of
25	Q. Let me restate it. What do you recall	25	the question.
	Page 68		Page 69
	D. Coles		D. Coles
2	A. No. It doesn't describe the	2	form and foundation.
3	difference, it just restates it.	3	A. I think I said I remember the 5
4	Q. Okay. Fair enough. Let me ask you to	4	billion number. It was to do with marks, and
5	turn to well, the fact that it's restating	5	I'm not sure that I learned that at this
6	it, is this do you recognize this as a, some	6	meeting, if indeed I was at this meeting.
7	type of attempted balance sheet here on the top	7	Q. Let me go ahead and ask you to turn to
8	of the page?	8	the exhibit previously marked as 461A. It's
9	A. Yes.	9	entitled "Lehman Brothers Holdings, Inc. Report
10	Q. Does the fact that it's that \$5	10	to Unsecured Creditors Committee, October 8,
11	billion difference is included in this manner,	11	2008," and on the second page you're listed as
12	does that give you refresh your recollection	12	apparently someone responsible for a
13	as to the nature of the \$5 billion difference,	13	presentation on significant transactions?
14	other than it relates to marks and a difference	14	A. Yes.
15	in valuation?	15	
		16	Q. Do you recognize this document?
16	MR. TAMBE: Objection to the form.		A. Yes.
17	A. That isn't what it says.	17	Q. Is this part of a presentation that
18	Q. Okay. On the prior page it refers to	18	Alvarez gave to the Creditors Committee?
19	a different valuation and it's referring to	19	A. Yes.
		20	Q. Did you help prepare this written
20	Lehman assets, correct?		
20 21	Lehman assets, correct? MR. TAMBE: Excuse me. Are you now	21	presentation?
20			presentation? A. Yes.
20 21 22	MR. TAMBE: Excuse me. Are you now asking him to interpret these notes? Is	21	
20 21 22 23	MR. TAMBE: Excuse me. Are you now asking him to interpret these notes? Is that what the question is?	212223	A. Yes.Q. Did you help present the presentation?
20 21 22	MR. TAMBE: Excuse me. Are you now asking him to interpret these notes? Is	21 22	A. Yes.Q. Did you help present the presentation?

	Pg 18	OT 1	.94
	Page 70		Page 71
1	D. Coles	1	D. Coles
2	to page 4531, did you help prepare or contribute	2	to you, the \$5 billion, at the time and what was
3	to the content on page 4531?	3	said about that?
4	A. No.	4	MR. TAMBE: Objection to the form of
5	Q. Were you there when this was presented	5	the question. Foundation.
6	to the Creditors Committee?	6	A. I remember certainly "marks" was used.
7	A. Yes.	7	I'm seeing "stale marks" here. I think that's
8	Q. Under "Assets Purchased" do you see	8	Jim quoting from that meeting, and it's "stale"
9	where it says, "43.1 Billion Repo Assets - Book	9	in inverted commas.
10		10	THE VIDEOGRAPHER: I'm sorry. I need
11		11	to switch the tapes.
12	A. Yes.	12	The time is 4:22 P.M. We're going off
13	Q. Does that refresh your recollection as	13	the record.
14	to the \$5 billion difference between the 43	14	(Pause in the proceedings.)
15	billion and 38 billion relating to an issue	15	THE VIDEOGRAPHER: The time is 4:26
16		16	P.M. We're back on the record. Video
17		17	number 2.
18		18	BY MR. THOMAS:
19		19	Q. While keeping that page open, from the
20		20	U.C.C. presentation, let me also ask you to look
21	Q. The 5 billion that's referred to in	21	at 463B. This is it's an e-mail with
22		22	representative of the Creditors Committee. I'm
23		23	not going to ask you about the e-mail, but the
24		24	attachments, in the attachments, the first sheet
25		25	of which is a balance sheet put together by Ms.
	Page 72		Page 73
1	D. Coles	1	D. Coles
2	Korycki, and I just wanted to ask if you had	2	foundation.
3	seen this balance sheet before?	3	A. I think it's the same 5 billion.
4	A. I'm not sure.	4	Q. And does reviewing these other
5	Q. Okay. Under "Assets" do you see where	5	documents, does it refresh your recollection at
6	it says Repo Assets, 38 billion; Negotiated Mark	6	all about the discussion at the meeting with
7	Haircut, 5 billion; Assets Transferred Under	7	Kirk and Tonucci and Weil about this \$5 billion
8	Repo ('Stale' Marks), 43 billion?	8	valuation issue or difference?
9	A. Yes.	9	MR. TAMBE: Objection to form and
10		10	foundation.
11 12		11 12	A. It's it's bringing back some
12 13	ı	13	memories, yes.
13 14	3		Q. Can you just describe what it was that
	· · · · · · · · · · · · · · · · · · ·	14	was explained to you at the meeting with Kirk
15 16	·	15 16	and Tonucci?
10 17	•	17	A. I don't remember that. O. Well, what were the memories that it's
	i e		Q. Well, what were the memories that it's
18	•	18	bringing back?
19 20	•	19	A. I remember the marks. I remember the
	•	20	word "stale." I remember 5 billion.
21 22	· ·	21 22	Q. Is it fair to assume that at the time
2.2 2.3	S	23	you would have either understood it or asked
23 24	3	23 24	somebody about it? MR. TAMBE: Objection to form
24 25	3	24 25	MR. TAMBE: Objection to form.
د ک	MR. TAMBE: Foundation. Lack of	د ع	A. I don't think I knew what it meant. I

Page 74 Page 75 D. Coles 1 D. Coles 1 2 2 the conditions at Lehman the week of September was staring at flashing lights. 3 3 Q. Well, again, do you recall -- you 15, would it surprise you if Lehman's marks by 4 don't recall the description of it given to you the end of that week were stale and not up to 4 5 in the Kirk and Tonucci and Weil meeting on or 5 date, updated, or accurate? 6 about the 29th of September? 6 MR. TAMBE: Objection to the form of 7 7 A. I recall stale marks, 5 billion. the question. Foundation. 8 8 Q. When you -- when you understood that A. I wouldn't have had a basis for making 9 9 there was this valuation difference or issue a determination. 10 0 with respect to Lehman's marks on certain Q. Do you recall at the meeting with Kirk 11 1 securities that had been transferred to and Tonucci and Weil whether someone from 12 12 Barclays, did it surprise you or cause you any Alvarez asked about the \$5 billion difference or 13 13 concern or cause you to take any follow-up whether it was volunteered by Kirk or Tonucci? 14 14 A. I don't recall. .5 15 O. If it was going to be accounted for in MR. TAMBE: Objection to form. 6 16 the balance sheet, would it have been important A. No. It didn't surprise me because I 17 17 didn't know what it meant. to understand what exactly it was, the \$5 8 Q. Do you recall or do you have a 18 billion difference? 19 recollection of not recalling -- not knowing 19 A. Yes. 20 20 what it meant? Q. Did you ever have -- we talked about MR. TAMBE: Objection to form. 21 the transaction adjustment with respect to cure 22 A. I didn't -- I didn't focus enormously and briefly with respect to compensation also. on it. I was comforted that Jim Fogarty was 23 Did you ever have occasion to 23 24 hunting this stuff down. 24 investigate or learn more about the transaction 25 O. And based upon your understanding of 25 adjustment for -- that related to compensation? Page 76 Page 77 1 D. Coles 1 D. Coles 2 2 A. What I do remember about that was in communication timelines and payment timelines in 3 the context of us, as the estate, wanting to 3 terms of their year-end bonus pools, and so there were individuals that Barclays had taken 4 make sure that those individuals that BarCap had 4 retained solely for purposes of providing the 5 on, former Lehman people, and there seemed to be 5 6 a lot of delay in getting crisp communication 6 residual estate transitional services, that that 7 7 compensation was going to allow Barclays to out of BarCap as to how they were going to 8 communicate bonuses and when they were going to 8 retain those people so that Barclays would be 9 able to perform under the Transitional Services 9 communicate bones not only to the people that 10 Agreement and that we, the estate, would get the 10 they assumed and offered employment to, but also 11 11 services we thought we could rightly expect. So those -- but also those people who were in the 12 we were -- and we also, of course, were 12 transitional services box who were there for 13 just a very limited purpose and probably just a 13 reimbursing Barclays for those transitional 14 14 services. So we would have been interested in short period of time. 15 what kind of bonus pool was available for those 15 And so we were seeking clarity on 16 16 people in the TSA. that, but it was -- it was clear that there was 17 17 Q. And did that involve going back and much debate within Barclays as to how to handle 18 18 looking at the \$2 billion number that's some of this. 19 referenced in the "Transaction Adjustment" 19 Q. Have you ever had occasion to look at 20 column? 20 or assess the value of the exchange-traded 21 derivatives or related collateral or margin that 2.1 A. I seem to remember that the -- that 22 22 was conveyed to Barclays as part of the sale this was an evolving issue and that it wasn't 23 entirely clear, I don't think, that Barclays 23 transaction? 24 24 was -- Barclays and Lehman I think had very A. No.

25

25

different compensation structures and

MR. MILLS: Object to the form.

	Pg 20	OT .	194
	Page 78		Page 79
1	D. Coles	1	D. Coles
2	Q. Do you know if you participated in a	2	an estate that is selling assets and those
3	meeting with FTI and Houlihan on approximately	3	individuals representing the estate are soon to
4	October 2, 2008 to discuss issues in the case?	4	be employees of the purchaser. Those employees
5	A. That sounds broad enough that I could	5	are in a conflicted situation, and those
6	have been at that.	6	employees would have to have very robust
7	Q. Let me, just for good order, let me	7	integrity to be switching hats and yet
8	show you an exhibit previously marked as 579A.	8	representing the estate in the process of
9	It's a one-page set of notes from the meeting	9	
10		10	switching hats over to the new employer. It's a
11	taken by Ms. Korycki, and if you would, just by	11	tough position to put employees in.
12	glancing at it, give me a sense whether it	12	Q. And it's one that commonly occurs out
	triggers any recollection as to whether you were		of necessity?
13	at this meeting or not.	13	A. It yes.
14	A. It doesn't say I was there.	14	Q. And were you aware that Lehman
15	Q. No, I'm not sure it says who was	15	employees involved in negotiating the deal were
16	there.	16	also at the same time negotiating employment
17	A. No, it's not illuminating.	17	agreements with Barclays?
18	Q. Okay. Do you have any basis or reason	18	A. Only after the fact.
19	to believe that anyone working for Lehman or	19	Q. Were you aware that the board was told
20	Barclays did anything improper or acted in bad	20	that?
21	faith in connection with this transaction?	21	A. No.
22	MR. TAMBE: Objection to form and	22	MR. TAMBE: Objection to the form of
23	foundation.	23	the question.
24	A. I don't, but I have seen many times	24	A. No.
25	when a company is being purchased and there is	25	Q. Putting aside that potential for
	Page 80		Page 81
1	D. Coles	1	D. Coles
2	conflict, you're not aware of any evidence of	2	Q. Do you have any recollection at all as
3	anyone acting in bad faith in connection with	3	to who may have been at that meeting?
4	the sales transaction, though; is that correct?	4	A. No. 579A, no.
4 5	MR. TAMBE: Objection to form and	5	Q. Do you have any recollection of that
6	foundation.	6	meeting at all?
7	A. I'm not aware of anything in	7	A. No.
8	particular, no.	8	MR. SHELLEY: That's all I've got.
9		9 10	Thank you. MR. THOMAS: Nothing further.
10	MR. THOMAS: Thank you. I have	11	THE VIDEOGRAPHER: The time is 4:41
11	nothing further.	12	P.M. We're going off the record.
12	THE WITNESS: Thank you.	13	000
13	MR. TAMBE: I have no questions.	14	
	MR. SHELLEY: I have a few questions.	15	
14	EXAMINATION BY	16	
15	MR. SHELLEY:	17	
16	Q. Mr. Coles, I'm Scott Shelley with the	18	DAMD IAMES COLES
17	law firm Quinn Emanuel. We're counsel for the	19	DAVID JAMES COLES
18	Official Committee of Unsecured Creditors.	20	Subscribed and sworn to
19	I just have a few follow-up questions		before me this day
20	about this Exhibit 579 we were talking about a	21	of 2010.
21	moment ago. I believe you stated that looking	22	
22	at the notes you thought they were not		
23	illuminating as to who was there; is that	23	
24	correct?	24	
25	A. Yes.	25	

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Page 1
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2
              UNITED STATES BANKRUPTCY COURT
3
               SOUTHERN DISTRICT OF NEW YORK
    -----x
5
    In Re:
6
                             Chapter 11
7
    LEHMAN BROTHERS Case No. 08-13555(JMP)
8
    HOLDINGS, INC., et al, (Jointly Administered)
                   Debtors.
10
11
12
               * * *HIGHLY CONFIDENTIAL* * *
13
               DEPOSITION OF NANCY DENIG
14
                    New York, New York
15
                      August 21, 2009
16
17
    Reported by:
18
    MARY F. BOWMAN, RPR, CRR
19
    JOB NO. 24044
20
21
22
23
24
25
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Page 6 Page 7 1 **DENIG - CONFIDENTIAL** 1 **DENIG - CONFIDENTIAL** 2 2 NANCY DENIG, wanted to let you know that it doesn't relieve you 3 3 called as a witness by the parties, of the obligation to answer the question. You 4 having been duly sworn, testified as 4 still have to answer the question, unless of 5 5 course your counsel instructs you not to answer follows: 6 **EXAMINATION BY** 6 the question, which he may do on occasion as well. 7 I think all the other counsel around 7 MR. HINE: 8 Q. Good morning, Ms. Denig. How are you? 8 the table will introduce themselves as they get up 9 9 to ask you questions, if they have any, but if you 10 10 O. I introduced myself before, but my have any questions -- unless you have any 11 name is Bill Hine. I am from the firm of Jones 11 questions, we can get started. 12 12 Day, which is special counsel to Lehman Brothers One point of clarification before we 13 get started. I see e-mails addressed to N. Bayne. 13 Holdings, Inc. in connection with all the 14 bankruptcy proceedings that are going on. 14 Is that you? 15 So your deposition today is in 15 A. That is my maiden name. 16 Q. So if I see --16 connection with those proceedings and some discovery that we are taking in those proceedings. 117 17 A. Unfortunately when you were at Lehman, 18 Have you ever been deposed before? 18 when I got married -- my user profile before I got 19 19 married was N. Bayne, which was my maiden name. A. I have not. 20 When I got married, in order for them to change 20 Q. Very simple. I am going to ask you a 21 bunch of questions. You are under oath, you are 21 the user name, they would have had to delete me 22 22 going to give me truthful answers. from the system altogether and I would have to 23 On occasion your counsel will raise an reapply for all my applications, which I didn't 23 24 want to do because I was already four years into 24 objection or interpose an objection. He is either 25 doing that for any number of reasons, but I just 25 the company, so I left my user name as N. Bayne. Page 8 Page 9 1 **DENIG - CONFIDENTIAL** 1 **DENIG - CONFIDENTIAL** 2 2 Q. If I see an e-mail addressed to A. Last position, regional head for fixed 3 3 N. Bayne at Lehman -income repo, middle office, so that was trade 4 4 A. That's me. support, so we supported the traders in the daily 5 5 Q. Could you tell me how long you worked transactions that they executed. 6 6 for Lehman? We did sales support, which also 7 7 A. 15 years. supported any trade confirmations, sales 8 8 Q. So that's starting in -confirmations, trade discrepancies with regards to 9 A. 1994, January 20. 9 the salespeople. 10 Q. OK. And could you kind of briefly 10 We did -- we reported the P&L to the 11 11 walk me through the progressions of positions you business lines, and, you know, some various little held up until the end? 12 12 odds and ends, but nothing that needs to be 13 A. I started as an analyst in customer 13 clarified. 14 Q. Who did you report to in that 14 service, which dealt with like trade discrepancies 15 for fixed income products. 15 position? 16 16 Moved to P&L in the finance division, A. Jim Hraska. 17 17 Q. Any other people that you reported to where I supported the repo desk for central 18 funding for all types of fixed income assets. 18 directly? 19 I then took on various different 19 A. No. groups throughout the life, sales support, trade 20 20 Q. How long have you held this position? 21 21 support, P&L, structured repo, EMG, trade and A. Three years of all that. I just kept 22 sales support, and probably that was pretty much 22 getting more stuff added to me as my career 23 it. So I pretty much stayed on the fixed income 23 progressed. So I started with one group and got 24 24 side pretty much all my career. another one, another, another, another. But 25 Q. What was the last position you held? 25 basically all in the same business line.

	1 <u>9 25</u>	<u> </u>	
	Page 54		Page 55
1	DENIG - CONFIDENTIAL	1	DENIG - CONFIDENTIAL
2	shortfall?	2	A. Yes.
3	A. We weren't.	3	Q. And can you tell me what that is?
4	Q. And so what did you do then?	4	A. Well, because we didn't we couldn't
5	A. Because we basically ran out of time,	5	make the rest of the collateral, because of the
6	the Fed and the DTC depositories ended up shutting	6	timing, they didn't receive the value of
7	down at a particular time and we didn't get	7	7 million 7 billion worth of collateral. So
8	everything that we wanted to over, because it	8	Chase lent Lehman 7 billion dollars to give back
9	wasn't enough time to do all the research.	9	to to give to Barclays to make up that.
10	Q. And you're talking about Thursday	10	Typically you wouldn't collateralize
11	evening?	11	cash with cash, but at that late hour, that was
12	A. Thursday evening around 11 o'clock.	12	really the only way to facilitate that so that
13	Q. So what was the shortfall by the time	13	Barclays was made whole.
14	of by the time you ended on Thursday night?	14	Q. And what secured that loan?
15	A. I am not 100 percent sure of what the	15	A. Chase. The assets that we still had
16	final figure was, but I want to say it was	16	in the box, that Lehman still had in the box.
17	42 billion is what they received.	17	Q. And the box meaning what?
18	Q. OK. So 42 is not the shortfall, 42 is	18	A. Our free collateral box, meaning any
19	what ultimately did make it?	19	assets that didn't get delivered over to BoNY and
20	A. Yeah.	20	was still in the possession of Lehman Brothers,
21	Q. Was there a 7 or 8 billion dollar	21	Inc.
22	shortfall, do you recall?	22	Q. And is that the 074 box?
23	A. Yes.	23	A. No, it was a Chase box.
24	Q. Is that the genesis of what I have	24	Q. OK. 074 box is separate?
25	seen referred to as box loan?	25	A. That's a DTC box.
	Page 56		Page 57
1		1	
1 2	DENIG - CONFIDENTIAL	1 2	DENIG - CONFIDENTIAL
2	DENIG - CONFIDENTIAL Q. I understand. OK.	2	DENIG - CONFIDENTIAL those via pledge mechanism to DTC, a DTC box for
2	DENIG - CONFIDENTIAL Q. I understand. OK. So now you have gotten us through	2	DENIG - CONFIDENTIAL those via pledge mechanism to DTC, a DTC box for BoNY, which was owned technically by Barclays.
2 3 4	DENIG - CONFIDENTIAL Q. I understand. OK. So now you have gotten us through Thursday night. What did you do Friday morning or	2 3 4	DENIG - CONFIDENTIAL those via pledge mechanism to DTC, a DTC box for BoNY, which was owned technically by Barclays. Q. And how much collateral was
2 3 4 5	DENIG - CONFIDENTIAL Q. I understand. OK. So now you have gotten us through Thursday night. What did you do Friday morning or Friday during the day?	2 3 4 5	DENIG - CONFIDENTIAL those via pledge mechanism to DTC, a DTC box for BoNY, which was owned technically by Barclays. Q. And how much collateral was transferred to the BoNY box in connection with
2 3 4 5 6 7	DENIG - CONFIDENTIAL Q. I understand. OK. So now you have gotten us through Thursday night. What did you do Friday morning or Friday during the day? A. Well, we there was a lot of	2 3 4 5 6	DENIG - CONFIDENTIAL those via pledge mechanism to DTC, a DTC box for BoNY, which was owned technically by Barclays. Q. And how much collateral was transferred to the BoNY box in connection with that effort?
2 3 4 5 6 7	DENIG - CONFIDENTIAL Q. I understand. OK. So now you have gotten us through Thursday night. What did you do Friday morning or Friday during the day? A. Well, we there was a lot of Q. I just mean Friday, the 19th of	2 3 4 5 6 7	DENIG - CONFIDENTIAL those via pledge mechanism to DTC, a DTC box for BoNY, which was owned technically by Barclays. Q. And how much collateral was transferred to the BoNY box in connection with that effort? A. A billion dollars, a billion and
2 3 4 5 6 7 8	DENIG - CONFIDENTIAL Q. I understand. OK. So now you have gotten us through Thursday night. What did you do Friday morning or Friday during the day? A. Well, we there was a lot of Q. I just mean Friday, the 19th of September.	2 3 4 5 6 7 8	DENIG - CONFIDENTIAL those via pledge mechanism to DTC, a DTC box for BoNY, which was owned technically by Barclays. Q. And how much collateral was transferred to the BoNY box in connection with that effort? A. A billion dollars, a billion and change.
2 3 4 5 6 7 8	DENIG - CONFIDENTIAL Q. I understand. OK. So now you have gotten us through Thursday night. What did you do Friday morning or Friday during the day? A. Well, we there was a lot of Q. I just mean Friday, the 19th of September. A. 19th. So first thing in the morning,	2 3 4 5 6 7 8 9	DENIG - CONFIDENTIAL those via pledge mechanism to DTC, a DTC box for BoNY, which was owned technically by Barclays. Q. And how much collateral was transferred to the BoNY box in connection with that effort? A. A billion dollars, a billion and change. Q. And now what was the purpose of
2 3 4 5 6 7 8 9	DENIG - CONFIDENTIAL Q. I understand. OK. So now you have gotten us through Thursday night. What did you do Friday morning or Friday during the day? A. Well, we there was a lot of Q. I just mean Friday, the 19th of September. A. 19th. So first thing in the morning, what we thought was pulled, that they were short	2 3 4 5 6 7 8 9	DENIG - CONFIDENTIAL those via pledge mechanism to DTC, a DTC box for BoNY, which was owned technically by Barclays. Q. And how much collateral was transferred to the BoNY box in connection with that effort? A. A billion dollars, a billion and change. Q. And now what was the purpose of transferring that to that BoNY box?
2 3 4 5 6 7 8 9 10	DENIG - CONFIDENTIAL Q. I understand. OK. So now you have gotten us through Thursday night. What did you do Friday morning or Friday during the day? A. Well, we there was a lot of Q. I just mean Friday, the 19th of September. A. 19th. So first thing in the morning, what we thought was pulled, that they were short collateral that we didn't finish, to try to get as	2 3 4 5 6 7 8 9 10	DENIG - CONFIDENTIAL those via pledge mechanism to DTC, a DTC box for BoNY, which was owned technically by Barclays. Q. And how much collateral was transferred to the BoNY box in connection with that effort? A. A billion dollars, a billion and change. Q. And now what was the purpose of transferring that to that BoNY box? MR. SHAW: Objection, foundation.
2 3 4 5 6 7 8 9 10 11	DENIG - CONFIDENTIAL Q. I understand. OK. So now you have gotten us through Thursday night. What did you do Friday morning or Friday during the day? A. Well, we there was a lot of Q. I just mean Friday, the 19th of September. A. 19th. So first thing in the morning, what we thought was pulled, that they were short collateral that we didn't finish, to try to get as much collateral that we knew was available in the	2 3 4 5 6 7 8 9	DENIG - CONFIDENTIAL those via pledge mechanism to DTC, a DTC box for BoNY, which was owned technically by Barclays. Q. And how much collateral was transferred to the BoNY box in connection with that effort? A. A billion dollars, a billion and change. Q. And now what was the purpose of transferring that to that BoNY box? MR. SHAW: Objection, foundation. A. We were under the impression we were
2 3 4 5 6 7 8 9 10 11 12 13	DENIG - CONFIDENTIAL Q. I understand. OK. So now you have gotten us through Thursday night. What did you do Friday morning or Friday during the day? A. Well, we there was a lot of Q. I just mean Friday, the 19th of September. A. 19th. So first thing in the morning, what we thought was pulled, that they were short collateral that we didn't finish, to try to get as much collateral that we knew was available in the DTC, because at this point the Fed collateral was	2 3 4 5 6 7 8 9 10 11 12	DENIG - CONFIDENTIAL those via pledge mechanism to DTC, a DTC box for BoNY, which was owned technically by Barclays. Q. And how much collateral was transferred to the BoNY box in connection with that effort? A. A billion dollars, a billion and change. Q. And now what was the purpose of transferring that to that BoNY box? MR. SHAW: Objection, foundation. A. We were under the impression we were still short market value.
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Page 190 Page 191 1 **DENIG - CONFIDENTIAL** 1 **DENIG - CONFIDENTIAL** 2 2 value, in I believe the 1.9 billion dollar range. in a search for additional unencumbered 3 collateral: is that correct? 3 A billion of it was transferred Friday 4 4 morning, which we didn't know what the total A. That's correct. 5 5 market value of that was until Monday, the 22nd, Q. Did you have an understanding of why 6 you were looking for this additional unencumbered 6 but on Saturday, those assets were not reflected 7 7 in any of the documentation that anybody had at collateral? 8 MR. SHAW: Objection, asked and 8 that point, because we didn't receive the file 9 9 from BoNY until Monday morning. answered. 10 10 So Saturday basically we were told to A. My impression was that we were -- we 11 had a shortfall in the delivery of the original 11 look for -- we were told, tasked to look for 12 12 repo, and we were just trying to find the rest of 1.9 billion. We kept referring to a billion of it the -- the collateral to make up the shortfall in 13 13 was delivered already, so we were really on the 14 market value. <u>l</u>4 search for 900 million odd. 15 Q. Again, I am a little confused. Is the 15 Q. And your understanding about what you 16 shortfall in the market value of assets that were 16 were looking for and why came from conversations 17 17 delivered -- withdrawn. I'll try that question a with Mr. Hraska; is that correct? 18 18 better way. A. Mr. Hraska and Mr. Forrest. 19 19 Can you be more specific about the Q. Did anyone ever tell you, Ms. Denig, 20 20 shortfall in the market value of securities that that one of the reasons that additional collateral 21 were delivered that you just told me about? 21 was transferred to BoNY on Friday, the 19th, was 22 22 A. Sure. When pens went down on the end because Lehman had had to transfer cash as part of 23 of September 18, they came back to us, and who, 23 the repo? 24 I'm not really sure who, but saying -- and it was 24 A. I knew Lehman transferred cash as part 25 communicated down to us that we were short in the 25 of the repo, so I wasn't sure how that was going Page 192 Page 193 1 **DENIG - CONFIDENTIAL** 1 **DENIG - CONFIDENTIAL** 2 2 to be reconciled. I thought that potentially to me or people told me about it until later on, 3 Chase and BoNY were kind of discussing that and 3 but not at that particular time, no. 4 working that out. I wasn't sure that they -- they 4 O. Have you ever heard at any time that segregated that collateral and were going to just 5 the reason additional unencumbered collateral was 5 6 deliver it the very next day, if Barclays would 6 moved to BoNY on the Friday, the 19th, was to 7 7 have given us the cash -- given Chase the cash release the cash that had been transferred as part 8 8 back, and then they were given collateral worth of the repo on the 18th? 9 9 that value. A. I did not. 10 10 Q. Do you have in front of you what has I wasn't sure how they were going to make that whole or whether they were just going to previously been marked as Exhibit 237? 11 11 12 A. Yes. 12 leave it as cash. 13 13 O. When Mr. Hraska testified last week, O. I am also handing you what has 14 previously been marked as Exhibit 150B. I don't 14 he told me that the reason additional collateral 15 15 think Mr. Hine marked that this morning. was transferred on the 19th from Lehman to BoNY 16 16 for the benefit of Barclays, it was with the You will see, Ms. Denig, that both 17 17 Exhibit 237 and Exhibit 150B have attachments; is intention of releasing some of the cash that had been pledged as part of the September 18 repo. 18 18 that right? 19 Did Mr. Hraska ever tell that information to you? 19 A. Yes. 20 20 MR. SHAW: Objection, form, Q. And both the attachments appeared out 21 21 mischaracterizes Mr. Hraska's testimony. of the file name TRI09192008.xls? 22 But you can answer the question. 22 A. Yes. 23 A. As far as my recollection was, it was 23 Q. But Exhibit 237 appears to be to satisfy the shortfall of collateral. How that version 3 of a spreadsheet with that same file 24 24

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was -- the 7 billion really didn't come more clear

25

name; is that correct?

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	Page 194		Page 195
1	DENIG - CONFIDENTIAL	1	DENIG - CONFIDENTIAL
2	A. OK, OK.	2	feeds into a trader system, feeds down to a
3	Q. Do you have any understanding of the	3	settlement system, and then a delivery is made.
4	difference between those two spreadsheets? I am	4	So according to the front-end system,
5	obviously not expecting you to go through them	5	this is what the individual CUSIPs were that were
6	line by line, CUSIP by CUSIP, but just if you	6	sent to BoNY on the 19th, the morning of the 19th.
7	could take a moment to look at them and tell me	7	And the market value where I wanted to see if
8	whether you have any understanding of the	8	it is different is that the values on the last
9	difference between the two, if any.	9	page of both equal the same amount of money, one
10	A. I don't see a difference.	10	billion eighty.
11	Q. Just looking for the moment at	11	One of them is a warrant which they
12	Exhibit 237. Is that the spreadsheet that you	12	didn't want, so I think they ended up delivering
13		13	that back. So in Exhibit 237, you see how the
14	A. No.	14	last page, you have a total market value of
15		15	1,035,000,000, and then there is this one line
16		16	that says 54 million?
17		17	Q. Um-hm.
18	Magics technology team. It is either Magics or	18	A. And if you look at the file on the
19		19	last page of Exhibit 150, the total value was
20	definitely Magics.	20	1,090,059,000. If you add up the two, it is the
21	Q. Can you explain what you mean by	21	same value. So I'm assuming that the information
22	Magics?	22	is consistent, that it reflects the same
23	A. Magics is a front-end system that	23	information.
24	would have been the mechanism that we did the	24	
25	pledges. So a trader inputs the information in,	25	Q. OK. A. The different version could just be
23	picages. So a trader inputs the information in,	2	A. The different version could just be
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1 2	DENIG - CONFIDENTIAL		DENIG - CONFIDENTIAL
2	DENIG - CONFIDENTIAL the fact that something, you know, was shuffled	2	DENIG - CONFIDENTIAL market value of 54 million. I think that was on
2	DENIG - CONFIDENTIAL the fact that something, you know, was shuffled around a little bit.	2	DENIG - CONFIDENTIAL market value of 54 million. I think that was on the excluded list and they did kick it back.
2 3 4	DENIG - CONFIDENTIAL the fact that something, you know, was shuffled around a little bit. Q. And the market values that you see	2 3 4	DENIG - CONFIDENTIAL market value of 54 million. I think that was on the excluded list and they did kick it back. Q. With the exception of that one warrant
2 3 4 5	DENIG - CONFIDENTIAL the fact that something, you know, was shuffled around a little bit. Q. And the market values that you see reflected on these two spreadsheets, Ms. Denig, is	2 3 4 5	DENIG - CONFIDENTIAL market value of 54 million. I think that was on the excluded list and they did kick it back. Q. With the exception of that one warrant worth 54 million dollars, is it correct that the
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	the fact that something, you know, was shuffled around a little bit. Q. And the market values that you see reflected on these two spreadsheets, Ms. Denig, is a market value that's assigned by Lehman, correct? A. Yes. Q. And if I understand your testimony correctly, these were CUSIPs that were transferred out from Lehman's box of DTC to BoNY for the benefit of Barclays on the 19th? A. That's correct. Q. And do you know whether or not the CUSIPs reflected in Exhibits 150B and 237 were ever returned to DTC's clearance boxes? A. I think this one asset was. I think that's why it is highlighted. I'm pretty sure my recollection is this was on the excluded list so they kicked it back. So in Q. Just so we have a clear record A. In Exhibit 237, you see there was this one security, the last page that's highlighted, and it is called the warrant, that's the type of product it is. Usually that was not something	2 3 4 5 6 7 8 9 1 1 1 2 1 1 1 1 1 1 1 1 1 1 1 1 1	DENIG - CONFIDENTIAL market value of 54 million. I think that was on the excluded list and they did kick it back. Q. With the exception of that one warrant worth 54 million dollars, is it correct that the assets reflected in Exhibit 237 were not held in LBI's clearance boxes as of the close of business on the 19th of September? A. That's correct. Q. And is it also correct that, again with that one exception of that one line item, the 54 million dollars, the assets reflected on Exhibit 237 were not at any time after close of business on September 19 ever included in LBI's clearance boxes? MR. SHAW: Objection to form, foundation. A. And I'm not 100 percent sure that there weren't other discrepancies, but as of this particular moment, when this particular file was done, this is the only one that we knew of that got kicked back. In subsequent reconciliations

Page 198 Page 199 1 DENIG - CONFIDENTIAL 1 **DENIG - CONFIDENTIAL** 2 have talked about, the CUSIPs that are reflected 2 A. Is that what it is called? 3 on 237 were not in Lehman's clearance box, 3 O. I believe so. It is the first time I 4 correct? have had a chance to say "emoticon" on the record 4 5 A. That's correct. 5 anywhere. 6 Q. As of Monday morning, again with this 6 It is an e-mail from you, Ms. Denig, 7 one exception, the CUSIPs reflected on 237 were to John Rodefeld at Barclays, Wednesday, September 7 8 not contained in Lehman's clearance boxes, 8 24th. 9 correct? 9 A. Yes. 10 A. That's correct. 10 O. With a re: line "Just to summarize." 11 Q. Thank you. That is all I have for 11 Can you explain to me the context in 12 those documents at the moment, I think. 12 which you sent this e-mail to Mr. Rodefeld, (Exhibit 253, document Bates stamped 13 13 please? 14 BCI-EX-S-00018190 through 191 marked for 14 A. Yes. Jim asked me to follow up with 15 identification, as of this date.) 15 the clearance folks to find out if, in fact, we 16 Q. Ms. Denig, you have in front of you 16 did pledge this particular CUSIP to Barclays. what has been marked as Exhibit 253, which is a 17 They didn't have it on their books anywhere, and I 17 18 18 two-page document I'll identify for the record as didn't have it as a discrepancy on my 19 bearing the Bates range BCI-EX-S-00018190 through 19 reconciliation with John. 20 20 So we went to the clearance folks, who 21 21 was this guy Ed Steffens. He went -- which is the If you'd just take a moment to 22 familiarize yourself with that and let me know 22 original one. He said this to Jim, which is 23 when you have finished doing so. basically a reflection of what was in each box for 23 24 OK. Do you see below the --24 these three CUSIPs, so he was saying 074, there 25 Mr. Hraska's emoticon? 25 was nothing in the box. In 636 we had 20 billion, Page 200 Page 201 1 **DENIG - CONFIDENTIAL** 1 **DENIG - CONFIDENTIAL** 2 2 210 in the box and nothing in the other two. transferred or pledged to Barclays? MR. SHAW: Objection, foundation. 3 3 I was telling him in this e-mail that 4 we already did pledge to him, which isn't 4 A. I can't be sure. reflected anywhere else in the e-mail, that at 70 5 5 Q. To the best of your knowledge, was it 6 million, 210, and that we had additional 200 -- 20 6 ever pledged or transferred to Barclays? 7 7 A. I think so. million, 210 in the box. Q. Do you know at which point these 8 8 Q. And when do you believe it was pledged 9 CUSIPs were pledged to Barclays? 9 or transferred to Barclays? 10 A. For the 70 million, 210, it was done 10 A. On the 29th or the 30th. 11 on -- it could have been done on a combination of 11 Q. Thank you. That is all I have about 12 the 18th and the 19th, because ultimately my list 12 that document. 13 13 ended up being combined and I only knew of one (Exhibit 254, document Bates stamped 14 list, so I combined those as could have been 14 BCI-EX-S-18206 with attachment marked for 15 15 delivered on either date. Though we could -- it identification, as of this date.) 16 Q. Ms. Denig, I have handed you what has 16 could be looked to see where. 17 17 been marked as Exhibit 254, which is a one-page Q. And that answered my question with 18 18 e-mail having the Bates range BCI-EX-S-00018206, respect to the 70 million. The 20 million figure? 19 19 and it has an attachment that was produced to us A. Yes. 20 Q. Is that the same answer? Was it 20 in native form, and the place holder is 21 21 pledged on either the 18th or the 19th? BCI-EX-S-00018207. 22 A. No, it was not. It was still as of 22 My question to you is a simple one, 23 September 24 sitting in the DTC box, 22 -- 636, 23 Ms. Denig: Do you know what this document is? 24 A. It looks like a dump of information 24 which is LBI's DTC box location. 25 Q. At any point did that CUSIP get 25 that was in our DTC boxes as of 9/24 based on what

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                     D. DZIEMIAN
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            UNITED STATES BANKRUPTCY COURT
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            SOUTHERN DISTRICT OF NEW YORK
 4
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    In Re:
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                              Chapter 11
7
    LEHMAN BROTHERS Case No. 08-13555(JMP)
    HOLDINGS, INC., et al., (Jointly Administered)
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                  Debtors.
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           DEPOSITION OF DANIEL DZIEMIAN
15
                 New York, New York
                   March 4, 2010
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    Reported by:
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    KATHY S. KLEPFER, RMR, RPR, CRR, CLR
    JOB NO. 28628
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	Page 6		Page 7
1	D. DZIEMIAN	1	D. DZIEMIAN
2	know.	2	assume that you have understood it. Is that
3	A. Okay.	3	fair?
4	Q. As you see, you have Kathy as our	4	A. Yes.
5	court reporter. She's going to try and take	5	Q. For how long, sir, were you employed
6	down everything we say today, so it's important	6	at Lehman?
7	that you answer in a manner that she can	7	A. Since July of 2000.
8	actually reflect on the transcript. So	8	Q. What was your title when you were
9	affirmative oral answers instead of nods or	9	first hired at Lehman?
10	shakes of heads are helpful.	10	A. Vice president.
11	A. Okay.	11	Q. Did you have a particular specialty?
12	Q. Try not to talk over each other.	12	Were you vice president of something?
13	It'll happen at some point in the deposition,	13	A. The clearance area. Purchase and
14	but if you let me finish my question before you	14	Sales and Options.
15	give me your answer, that will be helpful.	15	Q. Purchase and Sales and Options?
16	Also, in the unlikely event I have a	16	A. Yes.
17	question that Trish wants to object to, it will	17	Q. Was that, sir, your title until you
18	allow her to get that on the record as well.	18	joined Barclays in 2008?
19	If you don't understand one of my	19	A. No. I was promoted to senior vice
20	questions, please let me know. I'll be happy to	20	president.
21	try and rephrase it. Okay?	21	Q. Were you in the same area, sir?
22	A. (Witness nods.) Yes.	22	A. I had held a few different positions
23	Q. That's an example of a nodding as	23	at Lehman prior to September of 2008.
24	opposed to a verbal answer.	24	Q. Could you, from July 2000 onwards,
25	And if you do answer a question, I'll	25	could you tell me what those positions were,
	Page 8		Page 9
1	D. DZIEMIAN	1	D. DZIEMIAN
2	please?	2	A. That happened the year before.
3	A. One was being a project manager in the	3	Q. So in 2005, you were senior vice
4	Equity Middle Office. One was the manager of	4	president, correct?
5	the Business Analyst Group. One was the manager	5	A. Yes, to my recollection. It might
6	of the Client Reporting Group. One was managing	6	have been 2004 or or, yes, I would say 2005.
7	the Neuberger Berman correspondent clearing	7	Q. So, from 2006 onwards, you were senior
8	business, and that was in addition to the	8	vice president with responsibility in the
9	clearance responsibilities involving Purchase	9	clearing area for Purchase and Sales and
10	and Sales and Options.	10	Options, correct?
11	Q. From which period time, sir, did you	11	A. Yes, and for Neuberger Berman
12	have responsibility for the Purchase and Sales	12	correspondent clearing.
13	of options?	13	Q. Okay. Thank you.
14	A. It was when I first joined Lehman and	14	Focusing on the time period from 2006
15	then right before the integration.	15	onwards
16	Q. Okay. So from July 2000 until?	16	A. Uh-huh.
17	A. Probably two years.	17	Q and leaving to one side the
18 19	Q. Sometime in 2002?	18 19	Neuberger Berman issue A. Yes.
20	A. Likely.	20	
21	Q. And seems like you picked up responsibility for that area again sometime in	21	Q and your responsibilities, can you tell me on a day-to-day basis what were your
22	2008, is that accurate?	22	responsibilities in that role?
~ ~	·	23	A. Primary responsibilities involved
23	A Propanty 2006		
23 24	A. Probably 2006. O. In 2006 were you promoted to senior		
23 24 25	A. Probably 2006. Q. In 2006 were you promoted to senior vice president, sir?	24 25	exception management. It was basically reconciliation responsibilities for all of the

cquity and fixed income exchanges and also instruments across all of the exchanges and also for the options that were traded in the listed markets and cleared through the OCC. 6 Q. What was exception management? 7 A. Basically it's just a comparison of what you process internally versus what you clear at the street level, and any differences are considered exceptions that need to be resolved. 12 Q. Does that mean it was your responsibility to compare Lehman's internal responsibility to compare Lehman's internal resolved. 13 responsibility to compare Lehman's internal resolved in the OCC? 14 A. I from a trade processing standpoint, yes. 15 ag. Q. Can you describe for me that records with the reconciliation process. sir? In particular, how often did the reconciliation process. a particularly with the OCC take place? 24 A. It would be that's basically the trade processing system. So that's the trade facility, the trade storage facility, and also the trade routing mechanism that sends trades to now vanow as Broadridge. 9 Q. Can you give me an example of the types of data about an option that would be stored in TMS? 1 D. DZIEMIAN 2 system? 1 D. DZIEMIAN 2 system? 1 D. DZIEMIAN 2 system? 2 Q. What's a trade break, sir? 2 A. That's a that's a situation where responsible for, sir? 2 D. DZIEMIAN 3 A. It would be that's basically the trade processing system ship with the order of the trade routing mechanism that sends trades to our vendor-based system which was the ADP, or now known as Broadridge. 9 Q. Can you give me an example of the types of data about an option that would be stored in TMS? 1 D. DZIEMIAN 2 system? 1 D. DZIEMIAN 2 system? 2 D. DZIEMIAN 3 A. It would be that's basically the trade processing system and an option that would be stored in TMS? 1 D. DZIEMIAN 2 System? 2 D. DZIEMIAN 3 A. It would be or that's basically the trade processing system and an option that would be stored in TMS? 2 D. DZIEMIAN 3 A. It would be or that's basically the trade processing system and an ou				94
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	Page 22		Page 23
1	D. DZIEMIAN	1	D. DZIEMIAN
2	market maker internally based on your	2	Basically, at a high level, it's a comparison
3	processing.	3	engine that compares the data, as I mentioned
4		4	
	Q. You testified a few minutes ago, sir,		earlier, that's cleared at the OCC level versus
5	a few moments ago, sir, that the classification	5	what's internally processed and provides an
6	was based on the account range for the most	6	Exception Report based on the trading activity
7	part?	7	and the clearance activity at OCC level.
8	A. Yes.	8	Q. Was it the Libra system, sir, that you
9	Q. Other than the account range, what was	9	and your team would use to reconcile the
10	the classification of internal accounts based	10	internal Lehman data with the OCC data on a
11	on?	11	daily basis?
12	MS. BLOOMER: Objection to form.	12	A. Libra did that reconciliation.
13	A. It was dependent on the account range	13	Q. And once you had that reconciliation,
14	within the B1s I mentioned.	14	sir, what did you do with that?
15	Q. I just want to make sure I understood	15	A. We reacted to all of the exceptions.
16	your earlier answer. You said that it was based	16	We worked closely with the listed options middle
17		17	office to clear any and all breaks that resulted
18	really mean that it was based exclusively on the	18	from prior day processing.
19	account range?	19	Q. Did you do that on a daily basis, sir?
20	A. Yes.	20	A. Yes.
21	Q. Thank you. Can you describe the Libra	21	Q. Did you continue to do that
22	system for me, sir?	22	reconciliation in the week of September 15,
23		23	2008?
	A. I'm not responsible for that system.		
24	We're basically the end-users of that, so I	2425	A. To my recollection, yes, we did.
25	can't tell you the particulars of it.	25	Q. Is it your recollection, sir, that you
	Page 24		Page 25
<u>1</u>	D. DZIEMIAN	1	Page 25 D. DZIEMIAN
1 2		1 2	
2	D. DZIEMIAN and your team continued to reconcile Lehman's	1 2 3	D. DZIEMIAN A. No, I did not.
2 3	D. DZIEMIAN and your team continued to reconcile Lehman's internal data with the OCC data through the		D. DZIEMIAN A. No, I did not. Q. Did you have any role with respect to
2 3 4	D. DZIEMIAN and your team continued to reconcile Lehman's internal data with the OCC data through the close of business on the 19th of September?	3	D. DZIEMIAN A. No, I did not. Q. Did you have any role with respect to margin at the OCC, sir?
2 3 4 5	D. DZIEMIAN and your team continued to reconcile Lehman's internal data with the OCC data through the close of business on the 19th of September? A. Yes.	3 4 5	D. DZIEMIAN A. No, I did not. Q. Did you have any role with respect to margin at the OCC, sir? A. Margin was not part of my
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	D. DZIEMIAN and your team continued to reconcile Lehman's internal data with the OCC data through the close of business on the 19th of September? A. Yes. Q. Did you consider that you and your team, sir, on the 19th of September, 2008, were in fact able to reconcile the OCC data with Lehman's own records? A. I don't understand the question. Q. Were you able to clear up the breaks that were highlighted by the Libra Reconciliation Report on the 19th of September, 2008? A. Yes. To us it was business as normal. Q. To your knowledge, sir, were there any problems with the data feeds from the OCC into Lehman's systems the week of the 15th? A. Not to my knowledge, no. Q. To your knowledge, sir, were there problems with the data feeds from any other third-party source into withdrawn. Did you have responsibility for	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	D. DZIEMIAN A. No, I did not. Q. Did you have any role with respect to margin at the OCC, sir? A. Margin was not part of my responsibility. Q. Do you know, sir, whether or not the withdrawn. Do you know whether or not LBI traded options other than through the OCC? MS. BLOOMER: Objection to form. A. My area of responsibility was for listed options. I can't say whether there was any other peripheral activity going on. Q. Other than A. Other than listed options that cleared through the OCC that I was responsible for. Q. Who did you report to in the period that we've been discussing, '06 through '08? A. Neal Ullman. N-E-A-L U-L-L-M-A-N. Q. And Mr. Ullman reported up to whom, if you know? A. Alastair Blackwell. Q. In September of 2008, sir, who were

1			
	Page 34		Page 35
	D. DZIEMIAN	1	D. DZIEMIAN
2	you either needed to say yes or no to become an	2	MS. BLOOMER: Objection. Asked and
3	at will employee of Barclays.	3	answered.
4	Q. Was that e-mail sent around before the	4	A. It would be speculative on my part
5	22nd of September, 2008?	5	to to let you know how I think I felt back
6	A. I'm not a hundred percent sure.	6	then, when I truly can't remember.
7	Q. Prior to receiving that e-mail, sir,	7	Q. Okay. Just so we're not talking past
8	did you have any understanding that there may be	8	each other, sir, I wasn't asking how you felt.
9	an agreement between Barclays and Lehman?	9	I was asking what information you had.
10	A. I'd say so, yes.	10	Does that change your answer?
11		11	A. No, it doesn't.
12	•	12	
13	understanding was prior to receipt of the e-mail	13	Q. Do you recall, Mr. Dziemian, being
	you have just testified about?	14	asked at any point prior to September 22 to
14	A. I can't exactly recall what my		provide information to Barclays in connection
15	understanding at that time was.	15	with a potential deal between Lehman and
16	Q. Okay. I understand that it	16	Barclays?
17	happened	17	A. I do not recall being asked.
18	A. It's a long time ago.	18	Q. Do you recall being asked to give any
19	Q several months and years ago, sir,	19	information to anyone at Lehman with the
20	but sitting here today, can you give me the best	20	understanding that it was to be passed to
21	recollection you have of what your understanding	21	Barclays in connection with a potential deal
22	was prior to receiving the e-mail about the	22	between Lehman and Barclays, again, in the same
23	offer of employment from Barclays, what the	23	timeframe, prior to September 22, 2008?
24	agreement or potential agreement between Lehman	24	MS. BLOOMER: Objection to form.
25	and Barclays may be?	25	A. Not to my recollection.
	Page 36		Page 37
1	D. DZIEMIAN	1	D. DZIEMIAN
2	Q. In preparing for your deposition	2	just tell him yes or no to the question.
3	today, sir, did you look at any documents?	3	THE WITNESS: Okay.
4	MS. BLOOMER: You can answer.	4	Q. Did any of those documents that you
	A. Can you clarify what you mean by	5	
l O		1 3	
5 6			reviewed in preparation for your deposition,
6	"documents"?	6	reviewed in preparation for your deposition, sir, refresh your recollection of the events
6 7	"documents"? Q. Yes. Did you look at any e-mails or	6 7	reviewed in preparation for your deposition, sir, refresh your recollection of the events that are recorded in those documents?
6 7 8	"documents"? Q. Yes. Did you look at any e-mails or pieces of paper	6 7 8	reviewed in preparation for your deposition, sir, refresh your recollection of the events that are recorded in those documents? A. No.
6 7 8 9	"documents"? Q. Yes. Did you look at any e-mails or pieces of paper A. I thought I had testified earlier that	6 7 8 9	reviewed in preparation for your deposition, sir, refresh your recollection of the events that are recorded in those documents? A. No. Q. Who did you meet with to prepare for
6 7 8 9 10	"documents"? Q. Yes. Did you look at any e-mails or pieces of paper A. I thought I had testified earlier that I didn't look at e-mails, but I did look at	6 7 8 9 10	reviewed in preparation for your deposition, sir, refresh your recollection of the events that are recorded in those documents? A. No. Q. Who did you meet with to prepare for your deposition, sir?
6 7 8 9 10 11	"documents"? Q. Yes. Did you look at any e-mails or pieces of paper A. I thought I had testified earlier that I didn't look at e-mails, but I did look at MS. BLOOMER: That was a different	6 7 8 9 10	reviewed in preparation for your deposition, sir, refresh your recollection of the events that are recorded in those documents? A. No. Q. Who did you meet with to prepare for your deposition, sir? MS. BLOOMER: You can answer.
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6 7 8 9 10 11 12 13 14	"documents"? Q. Yes. Did you look at any e-mails or pieces of paper A. I thought I had testified earlier that I didn't look at e-mails, but I did look at MS. BLOOMER: That was a different question. He was asking you for about what you did in preparing for your declaration. Now he's asking what you did in preparing	6 7 8 9 10 11 12 13	reviewed in preparation for your deposition, sir, refresh your recollection of the events that are recorded in those documents? A. No. Q. Who did you meet with to prepare for your deposition, sir? MS. BLOOMER: You can answer. A. As I recall, I met with Trisha from Boies Schiller, there were a couple of other Boies Schiller representatives that I can't
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6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	"documents"? Q. Yes. Did you look at any e-mails or pieces of paper A. I thought I had testified earlier that I didn't look at e-mails, but I did look at MS. BLOOMER: That was a different question. He was asking you for about what you did in preparing for your declaration. Now he's asking what you did in preparing for your deposition, which he hasn't asked you who you met with yet, but so it's a different question now and you can answer the question. THE WITNESS: All right. MR. OXFORD: Thanks, Trish. A. The general reconciliation documents that had been prepared throughout the time	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	reviewed in preparation for your deposition, sir, refresh your recollection of the events that are recorded in those documents? A. No. Q. Who did you meet with to prepare for your deposition, sir? MS. BLOOMER: You can answer. A. As I recall, I met with Trisha from Boies Schiller, there were a couple of other Boies Schiller representatives that I can't recall their names at this time, and I believe Alan was there. MS. BLOOMER: He may have been. THE WITNESS: Right. Alan Kaplan. Q. Outside of meetings with the lawyers you have just identified, sir, did you meet with anybody else or talk to anybody else in connection with the preparation for your
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1 D. DZIEMIAN	1	D. DZIEMIAN
that you were familiar with capable in September	2	information such as buy, sell, and there were
of 2008 of providing a report of all of LBI's	3	fees and principal.
options positions at the OCC?	4	When you're talking about a Position
5 MS. BLOOMER: Objection to form.	5	Report, the main criteria or data field elements
6 A. Yes, I would say.	6	of those particular reports would be the
Q. Which systems would you use, sir, in	7	account, whether it was long or short, the
8 September 2008 if you were asked to provide such	8	description of the option, and potentially a
9 a report?	9	closing price.
10 A. Before the 22nd? After the 22nd? The	10	Q. Would that Position Report also have
whole month?	11	data about the quantity of the
Q. After the sorry, before the 22nd of	12	A. Yes.
September 2008. The Lehman systems I'm asking	13	Q option, sir?
about, sir, not the Barclays systems.	14	A. That would be the long or short value.
15 A. Okay. We would have used ADP and we	15	Q. And what information would be
would have used OCC.	16	indicated in the account field, sir, of such a
17 Q. And would the ADP Report, sir, would	17	report?
that report contain, or could it contain, the	18	
list of information you gave me earlier that is	19	MS. BLOOMER: Objection to form.
acontained in the TMS system?	20	A. For the internal ADP Report, it would
contained in the TMS system? MS. BLOOMER: Objection to form.	21	be the account number. At the OCC level, it
	22	would be in which particular account that was
A. We're talking about two different reports, right? So when we were talking about	23	held, whether it be customer, firm or market
		maker.
TMS, we were talking about trade summaries, so there was information such as price, there was	24	Q. Focusing in on the internal ADP
there was information such as price, there was	25	Report
Page 40		Page 41
1 D. DZIEMIAN	1	D. DZIEMIAN
2 A. Yes.	2	firm or market maker areas of the report?
Q for the moment, sir, would that	3	A. I'm sorry, can you repeat that?
4 report be able to distinguish between account	4	Q. Sure. Were any Lehman affiliates
5 numbers?	5	included in the firm or market maker areas of
6 A. I'm not sure I understand that	6	the ADP Report?
7 question.	7	A. The only affiliate that would have
8 Q. Let me try and ask a better question.	8	been included in firm would be LBSF.
9 Would it be possible to run an ADP	9	Q. Why was LBSF included in the firm
Report for account numbers reflecting customer	10	account range?
positions?	11	A. It was sometime before September 2008
12 MS. BLOOMER: Objection to form.	12	they were considered to be a subordinated
13 A. Yes, we would have the ability to		•
	11.5	affiliate and were thereby able to be treated as
114 separate that by clistomer, firm and market	13 14	affiliate and were thereby able to be treated as
separate that by customer, firm and market	14	a firm account.
15 maker.	14 15	a firm account. Q. What does it mean that they were
maker. 16 Q. In September 2008, while at Lehman,	14 15 16	a firm account. Q. What does it mean that they were considered to be a subordinated affiliate?
maker. Q. In September 2008, while at Lehman, sir, would you also have the ability to separate	14 15 16 17	a firm account. Q. What does it mean that they were considered to be a subordinated affiliate? MS. BLOOMER: Objection.
maker. Q. In September 2008, while at Lehman, sir, would you also have the ability to separate that report by accounts that were held for	14 15 16 17 18	a firm account. Q. What does it mean that they were considered to be a subordinated affiliate? MS. BLOOMER: Objection. A. I don't know what it means from the
maker. Q. In September 2008, while at Lehman, sir, would you also have the ability to separate that report by accounts that were held for Lehman affiliates?	14 15 16 17 18 19	a firm account. Q. What does it mean that they were considered to be a subordinated affiliate? MS. BLOOMER: Objection. A. I don't know what it means from the legal standpoint.
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1	D. DZIEMIAN	1	D. DZIEMIAN
2	thereby would hold positions at the firm level	2	earlier answer that referenced including name
3	in the OCC and, similarly, would be classified	3	and address of customers in the ADP Report?
4	on the ADP system as being in the firm account	4	What did you mean by that?
5	range.	5	A. The information from ADP was extracted
6	Q. Was there any way in the ADP system,	6	from an options trade date stock record. The
7	to your knowledge, sir, to distinguish between	7	only information on the stock record would be
8	affiliate and non-affiliate customers?	8	account number and what the basic position was
9	MS. BLOOMER: Objection to form.	9	held, long, short, security ID, security
10	A. Not without including name and address	10	description. It did not include name and
11	in the reports, which we did not do.	11	address.
12	Q. Would it be possible to run a report	12	Q. Would it be possible using the name
13	in ADP that distinguished between affiliate and	13	and address of the customer in the ADP Report to
14	non-affiliate customers, sir?	14	distinguish in September 2008 between affiliate
15	MS. BLOOMER: Objection. Asked and	15	and non-affiliate customers?
16	answered.	16	MS. BLOOMER: Objection. I think you
17	A. Are you asking would it be possible	17	are misunderstanding his testimony.
18	today? Would it be possible back then? Would	18	A. I don't recall ever attempting to
19	it be possible ever?	19	include name and address, so I can't answer the
20	Q. All of my questions are directed	20	question.
21	towards the period in September prior to	21	Q. Based on your knowledge of the system,
22	September 22, 2008, sir.	22	sir, are you able to tell me one way or the
23	A. I'm not sure if it would have been	23	other whether you think it would be possible to
24	possible.	24	run a report in September 2008 from ADP that
25	Q. Can you explain what you meant by your	25	would distinguish between affiliate and
	Page 44		Page 45
1	D. DZIEMIAN	1	D. DZIEMIAN
2	non-affiliate customers?	2	chart of accounts standpoint, I believe there
3	MS. BLOOMER: Objection to form.	3	were certain accounts that were designated as
4	Calls for speculation.	4	affiliate-related account ranges.
5	A. If you're asking my opinion in this	5	Q. And if you had the chart of accounts,
6	age of technology, of course.	6	sir, that reflected the designation of account
7	MR. OXFORD: We've been going about an	7	ranges as affiliate-related, would you then be
8	hour. You want to take a five-minute break?	8	
9	MC DI COMED C		able to run a report in ADP that printed off the
1 0	MS. BLOOMER: Sure.	9	positions, as we've described, for those
	(Recess; Time Noted: 10:32 A.M.)	9 10	positions, as we've described, for those affiliates?
11	(Recess; Time Noted: 10:32 A.M.) (Time Noted: 10:46 A.M.)	9 10 11	positions, as we've described, for those affiliates? MS. BLOOMER: Objection to form.
11 12	(Recess; Time Noted: 10:32 A.M.) (Time Noted: 10:46 A.M.) BY MR. OXFORD:	9 10 11 12	positions, as we've described, for those affiliates? MS. BLOOMER: Objection to form. A. Are you talking about all positions or
11 12 <mark>13</mark>	(Recess; Time Noted: 10:32 A.M.) (Time Noted: 10:46 A.M.) BY MR. OXFORD: Q. Mr. Dziemian, did Lehman affiliate	9 10 11 12 13	positions, as we've described, for those affiliates? MS. BLOOMER: Objection to form. A. Are you talking about all positions or are you talking about just option positions?
11 12 13 14	(Recess; Time Noted: 10:32 A.M.) (Time Noted: 10:46 A.M.) BY MR. OXFORD: Q. Mr. Dziemian, did Lehman affiliate customers have unique account numbers?	9 10 11 12 13 14	positions, as we've described, for those affiliates? MS. BLOOMER: Objection to form. A. Are you talking about all positions or are you talking about just option positions? Q. Just options positions.
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11 12 13 14 15 16 17 18 19 20 21 22	(Recess; Time Noted: 10:32 A.M.) (Time Noted: 10:46 A.M.) BY MR. OXFORD: Q. Mr. Dziemian, did Lehman affiliate customers have unique account numbers? MS. BLOOMER: Objection. A. Can you just clarify the question? When you say "unique account numbers," do you mean each if you can clarify the question. Q. Did each affiliate have a unique account number, sir?	9 10 11 12 13 14 15 16 17 18 19 20 21	positions, as we've described, for those affiliates? MS. BLOOMER: Objection to form. A. Are you talking about all positions or are you talking about just option positions? Q. Just options positions. A. If you had the criteria of what accounts you wanted to run that query on, yes, you can then do that. Q. And it's your understanding, Mr. Dziemian, that affiliates of LBI had certain designated account ranges?
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11 12 13 14 15 16 17 18 19 20 21 22 23	(Recess; Time Noted: 10:32 A.M.) (Time Noted: 10:46 A.M.) BY MR. OXFORD: Q. Mr. Dziemian, did Lehman affiliate customers have unique account numbers? MS. BLOOMER: Objection. A. Can you just clarify the question? When you say "unique account numbers," do you mean each if you can clarify the question. Q. Did each affiliate have a unique account number, sir? A. Each account within the affiliate range had a separate and unique account number. Q. Tell me about the affiliate account	9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	positions, as we've described, for those affiliates? MS. BLOOMER: Objection to form. A. Are you talking about all positions or are you talking about just option positions? Q. Just options positions. A. If you had the criteria of what accounts you wanted to run that query on, yes, you can then do that. Q. And it's your understanding, Mr. Dziemian, that affiliates of LBI had certain designated account ranges? A. That is my understanding. Q. The Positions Report, sir, that you run from ADP in order to get the information

	<u> </u>	of 1	5 .
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1	D. DZIEMIAN	1	D. DZIEMIAN
2	options, how long would it take to run such a	2	& Nolan futures system that was used to support
3		3	options processing for one of the Lehman
1 2 3 4	report?	4	affiliates.
	MS. BLOOMER: Objection.		
5 6	A. I can't really answer how long it	5	Q. Which affiliate, sir?
0	would take.	6	A. LBIE.
7	Q. Would it take days, sir?	7	Q. Again, before the break, sir, you said
8	A. No, it would not take days.	8	that if you wanted to provide a report of LBI's
9	Q. Would it take less than one day, sir?	9	options positions, you would use ADP and OCC.
10	A. Yes, it would take less than one day.	10	Do you remember that testimony, sir?
11	Q. Would it take less than half a day?	11	A. I do.
12	A. Yes, it would take less than a half a	12	Q. Tell me about the OCC data and systems
13	day.	13	it would use.
14	Q. Would it take less than four hours?	14	A. Well, what we would do is we would
15	A. Let's say around four hours.	15	MS. BLOOMER: Objection to form.
16	Q. You testified before the break about	16	A. We would use the internal ADP
17	the RISC application, sir. Do you recall that	17	information and reconcile that versus the actual
18	testimony?	18	OCC information.
19	A. I do.	19	Q. In doing so, sir, would you
20	Q. You said that there was some other	20	essentially be replicating the reconciliation
21	system that was called RISC or related to RISC	21	process that your team did on a daily basis at
22	that wasn't an application. Can you tell me	22	the end of the trading day?
23	about that system, sir?	23	MS. BLOOMER: Objection to form.
24	A. What was known as the RISC system in	24	A. Well, first of all, we don't do the
25	terms of my area of responsibility was the Rolfe	25	reconciliation at the end of a trading day. We
	Page 48		Page 49
1	D. DZIEMIAN	1	D. DZIEMIAN
2 3	do it on the beginning of the next day based on	2	Basically those are the primary data field
3	prior day processing. So it's a T1 or a trade	3	elements. There might be more, but I don't know
4	date plus one process. And no, it would not be		
	date plus one process. That no, it would not be	1 4	what they are ofthand
<u>ا</u>	the same because the Libra RPSA reconciliation	4 5	what they are offhand. O Would the OCC Position Report have the
5	the same because the Libra BPSA reconciliation that I spoke about earlier is exception-based.	5	Q. Would the OCC Position Report have the
6	that I spoke about earlier is exception-based,		Q. Would the OCC Position Report have the market price, sir?
6 7	that I spoke about earlier is exception-based, so that would just show you your exceptions. If	5 6 7	Q. Would the OCC Position Report have the market price, sir? A. I'm not sure if it does. It might
6 7 8	that I spoke about earlier is exception-based, so that would just show you your exceptions. If you wanted to see your actual holdings, you	5 6 7 8	Q. Would the OCC Position Report have the market price, sir? A. I'm not sure if it does. It might have the closing price. I'm not sure a hundred
6 7 8 9	that I spoke about earlier is exception-based, so that would just show you your exceptions. If you wanted to see your actual holdings, you would then do the reconciliation internally	5 6 7 8 9	Q. Would the OCC Position Report have the market price, sir? A. I'm not sure if it does. It might have the closing price. I'm not sure a hundred percent.
6 7 8 9	that I spoke about earlier is exception-based, so that would just show you your exceptions. If you wanted to see your actual holdings, you would then do the reconciliation internally versus OCC.	5 6 7 8 9	 Q. Would the OCC Position Report have the market price, sir? A. I'm not sure if it does. It might have the closing price. I'm not sure a hundred percent. Q. Would it be possible to run a report
6 7 8 9 10 11	that I spoke about earlier is exception-based, so that would just show you your exceptions. If you wanted to see your actual holdings, you would then do the reconciliation internally versus OCC. Q. Would you get a specific report from	5 6 7 8 9 10 11	 Q. Would the OCC Position Report have the market price, sir? A. I'm not sure if it does. It might have the closing price. I'm not sure a hundred percent. Q. Would it be possible to run a report from ADP of LBI's options positions that
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6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	that I spoke about earlier is exception-based, so that would just show you your exceptions. If you wanted to see your actual holdings, you would then do the reconciliation internally versus OCC. Q. Would you get a specific report from the OCC, sir, to reconcile against the ADP Report? A. There is an entire suite of reports on the OCC that are available to you. We would use Positions Report. Q. What information is contained in the OCC Positions Report? A. Most of what I had mentioned earlier.	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. Would the OCC Position Report have the market price, sir? A. I'm not sure if it does. It might have the closing price. I'm not sure a hundred percent. Q. Would it be possible to run a report from ADP of LBI's options positions that included the closing price field? MS. BLOOMER: Objection to form. A. The Options Trade Date Stock Record Report that I mentioned earlier does include what is known as an ADP house price, so that could be included in that. Q. What's A. You have to understand there are
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6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	that I spoke about earlier is exception-based, so that would just show you your exceptions. If you wanted to see your actual holdings, you would then do the reconciliation internally versus OCC. Q. Would you get a specific report from the OCC, sir, to reconcile against the ADP Report? A. There is an entire suite of reports on the OCC that are available to you. We would use Positions Report. Q. What information is contained in the OCC Positions Report? A. Most of what I had mentioned earlier. I can't recall every data field, but it would typically be the account that it's held in, whether it be customer, firm, market maker; it would be the quantity; it would be the strike	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. Would the OCC Position Report have the market price, sir? A. I'm not sure if it does. It might have the closing price. I'm not sure a hundred percent. Q. Would it be possible to run a report from ADP of LBI's options positions that included the closing price field? MS. BLOOMER: Objection to form. A. The Options Trade Date Stock Record Report that I mentioned earlier does include what is known as an ADP house price, so that could be included in that. Q. What's A. You have to understand there are various sources of prices. Q. Sure. What's the ADP house price, sir?
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	Pg 36	OI T	24
	Page 50		Page 51
1	D. DZIEMIAN	1	D. DZIEMIAN
		2	about?
2	Q. Which vendor, if you know, sir?	3	
3	A. I don't know. The primary vendor		Q. Let's say the start with the
4	would be IDSI, but they probably use a host of	4	Position Report.
5	others.	5	A. No, I wouldn't say it's difficult.
6	Q. You mentioned a suite of reports that	6	Q. How long would it take you to run an
7	were available from the OCC, sir. Apart from	7	OCC Position Report such as the one that you
8	the Positions Report that you have testified to,	8	have described to me?
9	what other reports are available from the OCC?	9	MS. BLOOMER: Objection to form.
10	A. A couple that come to mind. It would	10	A. To just run the report?
11	be an In The Money Report. There's also, within	11	Q. Yes.
12	the OCC Encore application, the ability to	12	A. Less than an hour.
13	search clearance activity based on clearing	13	Q. In what format does the report come
14	number. There are Assignment Reports that come	14	in, sir? Is it an Excel spreadsheet?
15	from OCC.	15	A. You can put it into an Excel
16	Those would be the ones that	16	spreadsheet, but we typically would put that in
17		17	a PDF.
18	immediately come to mind.	18	
	Q. What's an In the Money Report, sir?	1	Q. The In the Money Report, sir, how long
19	A. That's a report that basically shows	19	would that take to run?
20	you whether the option that you're holding at	20	A. The same. Less than an hour.
21	the OCC is in or out of the money.	21	Q. What's an Assignment Report?
22	Q. Is it difficult to run these reports	22	A. That shows you all of the option
23	from the OCC system, sir?	23	positions that you are assigned on, meaning a
24	MS. BLOOMER: Objection to form.	24	contra-broker has opted to early-exercise those
25	A. Which reports exactly are you talking	25	options.
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1	Page 52	1	Page 53
1	D. DZIEMIAN	1	D. DZIEMIAN
2	D. DZIEMIAN (Exhibit 670A, a document bearing	2	D. DZIEMIAN portion of a short file is?
2 3	D. DZIEMIAN (Exhibit 670A, a document bearing Bates Nos. BCI-EX-00013187, marked for	2 3	D. DZIEMIAN portion of a short file is? MS. BLOOMER: Objection to form and
2 3 4	D. DZIEMIAN (Exhibit 670A, a document bearing Bates Nos. BCI-EX-00013187, marked for identification, as of this date.)	2 3 4	D. DZIEMIAN portion of a short file is? MS. BLOOMER: Objection to form and foundation.
2 3 4 5	D. DZIEMIAN (Exhibit 670A, a document bearing Bates Nos. BCI-EX-00013187, marked for identification, as of this date.) Q. Mr. Dziemian, I've handed you what I	2 3 4 5	D. DZIEMIAN portion of a short file is? MS. BLOOMER: Objection to form and foundation. A. Are you asking me do I know what TIPS
2 3 4 5 6	D. DZIEMIAN (Exhibit 670A, a document bearing Bates Nos. BCI-EX-00013187, marked for identification, as of this date.) Q. Mr. Dziemian, I've handed you what I have marked as Exhibit 670A, which is an e-mail	2 3 4	D. DZIEMIAN portion of a short file is? MS. BLOOMER: Objection to form and foundation. A. Are you asking me do I know what TIPS are, or are you asking me do I know what this
2 3 4 5 6 7	D. DZIEMIAN (Exhibit 670A, a document bearing Bates Nos. BCI-EX-00013187, marked for identification, as of this date.) Q. Mr. Dziemian, I've handed you what I have marked as Exhibit 670A, which is an e-mail with a Bates range BCI-EX-00013187.	2 3 4 5 6 7	D. DZIEMIAN portion of a short file is? MS. BLOOMER: Objection to form and foundation. A. Are you asking me do I know what TIPS are, or are you asking me do I know what this file is?
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	Page 58		Page 59
1	D. DZIEMIAN	1	D. DZIEMIAN
2	is an hour difference.	2	MS. BLOOMER: Lacks foundation.
3	So, in answering your question, you	3	A. Well, the way I would see it is, it
4	said less than an hour?	4	was asked for at 3:47, and presuming that 3:47
5	Q. Right.	5	is New York time and the response came from
6	A. I can't deduce that from these	6	Sheila at the OCC at 4:41, I would say it was
7	e-mails.	7	fulfilled within at least less than three hours.
8	Q. Because you think the OCC is on	8	Q. Why three hours, sir?
9	central time?	9	A. With the hour difference, it's sort of
10	A. That's correct.	10	throwing me off a little bit.
11	MS. BLOOMER: Objection to form.	11	Q. So an hour difference from 4:41 is
12	· · · · · · · · · · · · · · · · · · ·	12	5:41 P.M., sir?
13	Q. So it mayMS. BLOOMER: Lacks foundation.	13	
14		14	A. Right.
	Q. Other than that one distinction, sir,		MS. BLOOMER: Objection.
15	are you able to tell me whether or not, based on	15	Q. I'm just curious as to how you get the
16	this e-mail, the OCC provided the requested	16	three hours
17	information to Barclays within two hours of its	17	MS. BLOOMER: Objection.
18	request?	18	Q from 3:47 P.M. to 5:41 P.M.
19	MS. BLOOMER: Objection to form.	19	MS. BLOOMER: Objection. Is that a
20	Lacks foundation.	20	question or are you just noting that you're
21	Are you asking him to tell you	21	curious?
22	anything other than read you this document,	22	Q. How do you get from 3:47 P.M. to 5:41
23	Neil?	23	P.M.?
24	MR. OXFORD: I think he has my	24	A. I'm not sure. So let's say less than
25	question.	25	two hours it seems as though it was fulfilled.
	Page 60		Page 61
1		1	
1 2	D. DZIEMIAN		D. DZIEMIAN
2	D. DZIEMIAN Q. That's all I have for that exhibit.	2	D. DZIEMIAN this just one report? I see that there's a blue
2 3	D. DZIEMIAN Q. That's all I have for that exhibit. (Exhibit 671A, a document bearing	2	D. DZIEMIAN this just one report? I see that there's a blue separator separating the accounts, market maker.
2 3 4	D. DZIEMIAN Q. That's all I have for that exhibit. (Exhibit 671A, a document bearing Bates Nos. OCC0036756 through 758, with	2 3 4	D. DZIEMIAN this just one report? I see that there's a blue separator separating the accounts, market maker. In my experience in options clearance,
2 3 4 5	D. DZIEMIAN Q. That's all I have for that exhibit. (Exhibit 671A, a document bearing Bates Nos. OCC0036756 through 758, with attachment OCC0036758-0001 through 1357,	2 3 4 5	D. DZIEMIAN this just one report? I see that there's a blue separator separating the accounts, market maker. In my experience in options clearance, yes, I have seen a report like that before.
2 3 4 5 6	D. DZIEMIAN Q. That's all I have for that exhibit. (Exhibit 671A, a document bearing Bates Nos. OCC0036756 through 758, with attachment OCC0036758-0001 through 1357, marked for identification, as of this date.)	2 3 4 5 6	D. DZIEMIAN this just one report? I see that there's a blue separator separating the accounts, market maker. In my experience in options clearance, yes, I have seen a report like that before. Q. In what circumstances have you seen
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	D. DZIEMIAN Q. That's all I have for that exhibit. (Exhibit 671A, a document bearing Bates Nos. OCC0036756 through 758, with attachment OCC0036758-0001 through 1357, marked for identification, as of this date.) Q. Mr. Dziemian, I've handed you what I have marked as Exhibit 671A. Take a look at that document and let me know whether you've seen it before. A. Same as the previous, where I don't recall specifically, but I am copied on the e-mail so I must have seen it at some point. Q. Okay. Looking at the report that's attached to the e-mail, sir, are you able to tell me anything about that report? MS. BLOOMER: Objection to form and lacks foundation. A. It looks a heck of a lot like the last report I just looked at, so same answers. Q. In your experience with Lehman, sir, have you ever seen have you seen this kind of report before?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	D. DZIEMIAN this just one report? I see that there's a blue separator separating the accounts, market maker. In my experience in options clearance, yes, I have seen a report like that before. Q. In what circumstances have you seen such a report, sir? MS. BLOOMER: Objection to form. Now we're talking about exactly this report or a report like this? Which is what he testified to. MR. OXFORD: I think my question is just fine, Trish. A. This would be a report that's available on the OCC suite of reports. Q. In that case, could a report such as this report attached to the e-mail at 671A have been run by Lehman at any time the week of the 15th of September, 2008? MS. BLOOMER: Objection to the form. A. Yes, I would say so. Q. Does that answer also apply to the report that is attached to the previous Exhibit

		01 1	
	Page 62		Page 63
1	D. DZIEMIAN	1	D. DZIEMIAN
2	A. Again, that would have been available	2	e-mail on Sunday, the 21st of September, at
3	in the suite of reports.	3	around 7:30 Greenwich Mean Time and he copies
4	Q. Mr. Dziemian, I've handed you a	4	you on that e-mail, correct?
5	document marked previously as Exhibit 555 in	5	A. I am copied, yes.
6	these depositions. Take a moment to review that	6	Q. Do you know who Mr. Stack is?
7	and let me know if you have seen this before.	7	A. I believe Tim is the head of futures
8	A. So, as far as the e-mail, again, not	8	trading for Barclays Capital.
9	specifically, but I was added to the chain so at	9	Q. Mr. Pearn writes, and he signs it
10	÷	10	Frank, which I think gives us the clue
11		11	A. Right, I just noticed that.
12	preparation for your deposition, sir?	12	Q that I might not be off-base.
13		13	He writes, "Tim here are the OCC
14		14	statements for LBI as of 9/22 reflecting our
15		15	cash and securities collateral held for LBI
16	, . ,	16	Account 074." Do you see that?
17	· · · · · · · · · · · · · · · · · · ·	17	A. I do.
18		18	Q. He then goes on to write, "Dan and
19		19	Craig provided these and can answer your
20	1	20	questions." Do you see that?
21	Q. Was Francis Pearn a legacy Lehman	21	A. I do see that.
22	employee, to your knowledge?	22	Q. Did you provide the attached OCC
23	A. I don't know that.	23	statements to Mr. Pearn?
24	Q. I'll represent to you that Francis is	24	A. I do not recall providing those, no.
25	a man. So Mr. Pearn sends to Tim Stack an	25	Q. Does this e-mail reflect your
	Page 64		Page 65
1	D. DZIEMIAN	1	D. DZIEMIAN
2	sorry. Does this e-mail refresh your	2	asked you any questions in connection with this
3	recollection that you had some involvement in	3	e-mail and the attachment?
4	providing information, directly or indirectly,	4	A. I do not recall.
5	to Barclays in the week leading up to September	5	Q. When was the first time you spoke to
6	22, 2008?	6	Mr. Stack?
/	A. No, it does not.	7	A. I don't recall speaking to Mr. Stack.
8	Q. Were you working that Sunday, 21st,	8	Q. Ever?
9	sir?	9	A. I don't recall any conversations with
10	A. As I recall, I was.	10	Mr. Stack.
11	Q. Was that routine for you? Were you	11 12	Q. Do you recall any conversations with
12	normally in the office on a Sunday?	13	anybody with Barclays in the week prior to
13	MS. BLOOMER: Objection to form. Assumes facts not in evidence.	14	September 22, 2008? A. I do not recall.
14 15		15	
16		16 16	Q. The report that's attached to the e-mail at Exhibit 555, sir, is that one of the
17	\mathcal{L}	17	reports that's part of the suite of reports you
18	ž	18	testified was available from the OCC systems?
19	Q. Were you in the office on Sunday, 21st, or working remotely?	19	A. So there are a couple of reports. So
20	A. As I recall, I was in the office.	20	the account summary by CMO, yes. That would be
21	Q. Mr. Pearn goes on to say that, "Dan	21	something that the Clearance Team would look at.
22	and Craig can answer your questions." Do you	22	The collateral inventory by CMO, again, that
23	see that?	23	was that was included in the suite of
	A. I do.	24	reports, but not for the Clearance Team.
144			
24 25	Q. Do you recall whether or not Mr. Stack	25	Q. Does "CMO" stand for clearing

	Pg 39	OI T	34
	Page 90		Page 91
1	D. DZIEMIAN	1	D. DZIEMIAN
2	MS. BLOOMER: Same objection and	2	A. Yes, I did.
3	instruction.	3	Q. Can you tell me what it is?
		4	A. It's an extract summary of the bridge
4	A. I'd say that I'd say that it was an		
5	idea that was confirmed and agreed by mutual	5	account reconciliation across the LBI processing
6	parties across both operations, Finance and	6	system and the Barclays Capital ADP processing
7	Regulatory.	7	system.
8	Q. Who in Finance was involved in that	8	Q. And which extract is it, sir? What
9	decision?	9	information is extracted from?
10	A. I can't recall specifically who.	10	A. It's the information related
11	Q. Who in Regulatory was involved in that	11	specifically to the affiliate activity.
12	decision?	12	Q. What's the reference in the second
13	A. Again, I can't recall specifically	13	column, sir, to LBI ADP 012?
14	who.	14	A. That's the client number. That's
15	(Exhibit 674A, a document bearing	15	Lehman Brothers' ADP client number. The ADP has
16	Bates Nos. BCI-EX-00297544, with attachment,	16	certain client numbers for all of its clients.
17	marked for identification, as of this date.)	17	That happened to be the LBI client number, as
18	Q. Mr. Dziemian, I've handed you what I	18	224 is the Barclays Capital ADP. That was the
<mark>19</mark>	marked as Exhibit 674A, which is a document	19	new ADP system that we had set up.
20	bearing the Bates number BCI-EX-0027544.	20	Q. And can you explain to me what are the
21	A. Yes.	21	numbers under the ADP Debit and Credit columns,
22	Q. Have you seen this document before,	22	the LBI ADP Debit and Credit columns, what do
23	sir?	23	those represent?
24	A. Yes, I have.	24	A. Just the LBI side do you want to know?
25	Q. Did you create this document, sir?	25	Q. Yes, for now.
			,
	Page 92		Page 93
1	Page 92	1	Page 93
1 2	Page 92 D. DZIEMIAN	1 2	Page 93 D. DZIEMIAN
2	D. DZIEMIAN A. Okay. That represents the activity	2	D. DZIEMIAN MR. OXFORD: Let me try and clean that
2	D. DZIEMIAN A. Okay. That represents the activity that was processed versus the actual affiliate	2	D. DZIEMIAN MR. OXFORD: Let me try and clean that up a little bit, because it was vague.
2 3 4	D. DZIEMIAN A. Okay. That represents the activity that was processed versus the actual affiliate client accounts, and the end result in the	2 3 4	D. DZIEMIAN MR. OXFORD: Let me try and clean that up a little bit, because it was vague. Q. There are a series of debits and
2 3 4 5	D. DZIEMIAN A. Okay. That represents the activity that was processed versus the actual affiliate client accounts, and the end result in the bridge accounts, in the denoted bridge accounts,	2 3 4 5	D. DZIEMIAN MR. OXFORD: Let me try and clean that up a little bit, because it was vague. Q. There are a series of debits and credits listed under the heading "LBI ADP 012,"
2 3 4 5 6	D. DZIEMIAN A. Okay. That represents the activity that was processed versus the actual affiliate client accounts, and the end result in the bridge accounts, in the denoted bridge accounts, is basically the offset of all of that activity.	2 3 4 5 6	D. DZIEMIAN MR. OXFORD: Let me try and clean that up a little bit, because it was vague. Q. There are a series of debits and credits listed under the heading "LBI ADP 012," correct?
2 3 4 5 6 7	D. DZIEMIAN A. Okay. That represents the activity that was processed versus the actual affiliate client accounts, and the end result in the bridge accounts, in the denoted bridge accounts, is basically the offset of all of that activity. So in the example of number 1, "LBIE	2 3 4 5 6 7	D. DZIEMIAN MR. OXFORD: Let me try and clean that up a little bit, because it was vague. Q. There are a series of debits and credits listed under the heading "LBI ADP 012," correct? A. That is correct.
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Page 94 Page 95 D. DZIEMIAN D. DZIEMIAN 2 processing system? The ADP processing system? 2 Barclays' belief or your belief, sir, that that 3 3 The LBI ADP processing system? settlement activity was attributable not to 4 4 Barclays, but to LBI? Yes. 5 5 Is that what you're talking about? MS. BLOOMER: Objection to form, A. 6 6 foundation, and I'm instructing the witness O. Yes. 7 The reason we needed to record the 7 not to answer to the extent that it would A. 8 entries in that manner is because, as I had 8 require him to explain an understanding that 9 9 previously testified, there were no longer he formed through discussions with Barclays' settlement bank capabilities or settlement 10 10 counsel. 11 facilities in OCC or in DTC 074, which was 11 So you asked me if it's my 12 formerly linked with OCC 074, and the settlement 12 understanding that -- can you repeat that, bank that was formerly linked to OCC 074 was 13 13 please? 14 changed from LBI to BCI. 14 (Record read.) 15 So ordinarily the entries that you see 15 A. Well, there's no real easy answer to 16 posted in these bridge accounts, the general 16 that, so the settlement obligations of the OCC offset would have been either a bank account on 17 became the responsibility of Barclays Capital. 17 18 All of the underlying events and activities at 18 LBI or a settlement depository account on LBI, 19 but those no longer existed as of September 22. 19 the OCC were funded by Barclays Capital. It was 20 They were all re- or switched and repointed to 20 related to LBI affiliate activity. 21 Barclays Capital. So all of that settlement 21 The balances you see here are the end 22 activity was happening in Barclays Capital as of 22 results of all of that activity. So the net 23 September 23. 23 total across the BCI ADP 224 processing system, Q. And were the entries reflected in 24 that was the net funding that Barclays Capital 24 25 Exhibit 674A, are those intended to account for 25 had to put up for the affiliate activity related Page 97 Page 96 D. DZIEMIAN 1 D. DZIEMIAN 1 2 2 to LBI affiliates. attributable to. 3 Q. And is the purpose of this bridge 3 Q. I appreciate that answer, sir. Don't 4 4 account, sir, to charge the net cost of closing think I don't when I ask my question for a third 5 5 out those affiliate options positions back to time, but with respect, I don't think I got an 6 6 the LBI estate? answer to it. 7 7 MS. BLOOMER: Objection. Lack of (Record read.) 8 8 foundation. MS. BLOOMER: I'm going to object. 9 9 I'm going to give the same instruction and A. I'm not exactly sure what the disposition of those balances are at this time. 10 10 asked and answered already twice now. 11 Q. That wasn't quite my question. 11 A. Maybe that's answered in paragraph 14 of the declaration. 12 MR. OXFORD: Can you read back my 12 question? 13 13 Q. I can read your declaration, sir, and 14 (Record read.) 14 reading paragraph 14, does that mean the answer 15 MS. BLOOMER: I'm going to object to 15 to my question is yes? 16 the form and I'm going to again instruct you 16 MS. BLOOMER: Objection to the form. 17 not to answer the question to the extent it 17 He's tried three different ways to answer 18 would require you to disclose the substance 18 the question now. If you don't like any of 19 of discussions you had with Barclays' 19 those three answers, he doesn't have to keep 20 counsel. 20 trying again. 21 A. I will say that the bridge account 21 MR. OXFORD: With respect, I think reconciliations were established and put in 22 22 he's tried three different ways not to 23 place to reconcile all of the activity and to 23 answer my question -- actually, maybe a 24 24 designate each of the specific and unique LBI fourth now. 25 affiliates that all of the activity was 25 THE WITNESS: No, I am trying to

D. DZIEMIAN answer your question. MS. BLOOMER: Asked and answered. Objection. Q. Is the answer to my question "yes." MS. BLOOMER: Asked and answered. Objection. Q. Is the answer to my question "yes." MS. BLOOMER: Asked and answered. Objection. Q. Is the answer to my question "yes." MS. BLOOMER: Asked and answered. Objection. Q. Is the answer to my question "yes." MS. BLOOMER: Asked and answered. Objection. Q. Is the answer to my question "yes." MS. BLOOMER: Asked and answered. Objection. Q. When the activity of the affiliate activity at OCC 074. Is the effect of the bridge accounts was to perform a comprehensive reconciliation based on the activity of the affiliate activity at OCC 074. Is the effect of the bridge account, sir, to charge back to the LBI estate the net cost of closing out the affiliate activity at rerelected on Fshibit 674A? Immost answer to the extent it requires you to disclose the substance of discussions with Barclay? A. That was not the purpose of the bridge accounts was to perform a comprehensive reconciliation as was to perform a comprehensive reconciliation as the activity of the affiliate activity at the Color of the Affiliate of the a		Pg 4:	T OL T	94
answer your question M. BLOOMER: Asked and answered. Objection. Q. Is the answer to my question "yes," M. BLOOMER: Asked and answered. Objection. Record read.) A. That was not the purpose of the bridge accounts was to perform a comprehensive reconciliation based on the activity of the affiliate activity at at OCC 074. Is open form a comprehensive reconciliation based on the activity of the affiliate activity at at OCC 074. Is open form a comprehensive reconciliation based on the activity of the affiliate activity at at OCC 074. Is open form a comprehensive reconciliation based on the activity of the affiliate activity at a to Cci of closing out the affiliate activity at a reflected on Exhibit 674A? M. BLOOMER: Objection to form. A. I would say that those balances would serve as a basis for that creativity at the object of the individual. Bla fiffiliates? M. BLOOMER: Objection to form and I Page 100 D. DZIEMIAN A. The remaining positions in OCC 074? A. To conjunction with the listed office and the business, we perform an orderly liquidation of the remaining affiliate positions, as you've described? A. Take that was not a control object and the substance of discussions with Barclays' counsel. A. Take that that means. A. Who in the middle office were you working with on this project? A. I don't recall any one specific individual. M. BLOOMER: The poing to object and the substance of discussions with Barclays' counsel. A. The remaining positions in OCC 074? A. The		Page 98	:	Page 99
answer your question M. BLOOMER: Asked and answered. Objection. Q. Is the answer to my question "yes," M. BLOOMER: Asked and answered. Objection. Record read.) A. That was not the purpose of the bridge accounts. The purpose of the bridge accounts was to perform a comprehensive reconciliation based on the activity of the affiliate activity at at OCC 074. Is the effect of the bridge account, sir, to charge back to the LBI estate the net cost of closing out the affiliate activity at a reflected on Exhibit 674A? Q. Do you know, sir, why the reconciliation is with the LBI estate, the net cost of closing out the affiliate activity at reflected on Exhibit 674A? Q. Do you know, sir, why the reconciliation is with the LBI estate, not the individual LBI affiliates? MS. BLOOMER: Objection to form. A. I would say that those balances would serve as a basis for that. Q. Do you know, sir, why the reconciliation is with the LBI estate, not the individual LBI affiliates? MS. BLOOMER: Objection to form and I remaining affiliate positions, as you've described? A. I can't recall any one specific individual. MS. BLOOMER: Im going to object and the substance of discussions with Barclays' counsel. A. A. Yes, I didn't understand that question. Can you just please read that back? (Record read.) A. When just a purpose of the bridge accounts at question. Can you just please read that back? (Record read.) A. When you say "with the LBI estate," I'm not sure what that means. A. When you say "with the LBI estate," I'm not sure what that means. A. The remaining positions in OCC 074? A. The remaining positions in OCC 074? A. I would say that those balances would serve as a basis for that. The point of the colory liquidation of the remaining affiliate positions, as you've described? A. I can't recall any one specific individual. MS. BLOOMER: I'm going to object and the substance of discussions with Barclays' counsel. A. Tan't recall any one individual making that decision. I believe it was more a consensus across the board	1	D. DZIEMIAN	1	D. DZIEMIAN
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Sir? MS. BLOOMER: Asked and answered. 8			5	
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24 I mentioned earlier. 24 OCC account in terms of the affiliates.				
25 Q. Could those options that were not 25 Q. Do you know, sir, whether anybody at	12.4	I mentioned earlier.	24	OCC account in terms of the affiliates.

	Fy 42	 	<u> </u>
	Page 102		Page 103
1	D. DZIEMIAN	1	D. DZIEMIAN
2	Barclays took instructions from the affiliates	2	trading across the different categories of
3	as to the exercise for close-out of their	3	customers that you just described to me?
4	options?	4	MS. BLOOMER: Objection to form.
5	A. I am not aware of any.	5	A. To my recollection, there was little
6	Q. Mr. Dziemian, do you have an	6	or no volume throughout the entire week of 9/15
7	understanding of the different types of options	7	through 9/19.
8	customers that Lehman had in September 2008?	8	Q. By that answer, sir, do you mean to
9	A. Yes.	9	communicate, sir, that there were no additional
10	Q. What different types of options	10	options placed or exercised during that
11	customers did Lehman have in September 2008?	11	timeframe?
12	A. You're asking for general	12	A. No. No. Exercising assignments are
13	classification?	13	completely different. When you're talking about
14	Q. Yes.	14	trading volumes, you're talking about executions
15	A. In the customer account at OCC 074, we	15	at the exchange level. That activity virtually
16	held positions for the LBI affiliates, our	16	stopped as of September 15. Exercise and
17	institutional client base, our prime services	17	assignments continued as normal throughout that
18	client base, our PIM client base, and in OCC	18	week into the expiration weekend and from 9/22
19	273, we held positions for our Neuberger Berman	19	and forward, as normal.
20	client base.	20	Q. Would it be possible to determine on
21	Q. The references to prime services, was	21	September 19, 2008 the volume of positions,
22	that, sir, to your prime broker customers?	22	existing positions, held on behalf of each of
23	A. Yes.	23	the types of customers that you've just
24	Q. Was there a way on September 19, 2008,	24	described to me?
25	sir, to determine the relative volume of options	25	MS. BLOOMER: Objection to form.
25	sif, to determine the relative volume of options	25	MS. BLOOMER. Objection to form.
			- 105
	Page 104		Page 105
1	D. DZIEMIAN	1	D. DZIEMIAN
2	D. DZIEMIAN A. Are you asking whether it would be	2	D. DZIEMIAN Vague and ambiguous.
2 3	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when	2 3	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates
2 3 4	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible?	2 3 4	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were
2 3 4 5	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on	2 3	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account.
2 3 4 5 6	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September?	2 3 4	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more
2 3 4 5 6 7	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September? A. Yes. By developing any type of an	2 3 4 5 6 7	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more specification as to what the proportions of the
2 3 4 5 6 7 8	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September? A. Yes. By developing any type of an Excel type macro, we could have done that.	2 3 4 5 6 7 8	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more specification as to what the proportions of the positions were across the other remaining types
2 3 4 5 6 7 8 9	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September? A. Yes. By developing any type of an Excel type macro, we could have done that. Q. Without developing that macro, sir,	2 3 4 5 6 7	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more specification as to what the proportions of the positions were across the other remaining types of customers you've described to me?
2 3 4 5 6 7 8 9	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September? A. Yes. By developing any type of an Excel type macro, we could have done that. Q. Without developing that macro, sir, are you able to tell me sitting here today in	2 3 4 5 6 7 8 9	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more specification as to what the proportions of the positions were across the other remaining types of customers you've described to me? MS. BLOOMER: Objection to form.
2 3 4 5 6 7 8 9 10	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September? A. Yes. By developing any type of an Excel type macro, we could have done that. Q. Without developing that macro, sir, are you able to tell me sitting here today in broad terms what the proportions of the	2 3 4 5 6 7 8 9 10	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more specification as to what the proportions of the positions were across the other remaining types of customers you've described to me? MS. BLOOMER: Objection to form. A. It would be it would be just a
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2 3 4 5 6 7 8 9 10 11 12 13	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September? A. Yes. By developing any type of an Excel type macro, we could have done that. Q. Without developing that macro, sir, are you able to tell me sitting here today in broad terms what the proportions of the	2 3 4 5 6 7 8 9 10	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more specification as to what the proportions of the positions were across the other remaining types of customers you've described to me? MS. BLOOMER: Objection to form. A. It would be it would be just a guess. I would say it's probably Prime Services, Institutional, Barclays Wealth or, you
2 3 4 5 6 7 8 9 10 11 12 13 14	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September? A. Yes. By developing any type of an Excel type macro, we could have done that. Q. Without developing that macro, sir, are you able to tell me sitting here today in broad terms what the proportions of the positions in 074C were relating to each of the	2 3 4 5 6 7 8 9 10 11 12 13	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more specification as to what the proportions of the positions were across the other remaining types of customers you've described to me? MS. BLOOMER: Objection to form. A. It would be it would be just a guess. I would say it's probably Prime Services, Institutional, Barclays Wealth or, you know, it's an impossible question to answer.
2 3 4 5 6 7 8 9 10 11 12 13 14 15	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September? A. Yes. By developing any type of an Excel type macro, we could have done that. Q. Without developing that macro, sir, are you able to tell me sitting here today in broad terms what the proportions of the positions in 074C were relating to each of the types of customers you've described to me? MS. BLOOMER: Objection to form. Vague and ambiguous.	2 3 4 5 6 7 8 9 10 11 12 13 14 15	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more specification as to what the proportions of the positions were across the other remaining types of customers you've described to me? MS. BLOOMER: Objection to form. A. It would be it would be just a guess. I would say it's probably Prime Services, Institutional, Barclays Wealth or, you know, it's an impossible question to answer. Q. Okay. Thank you. I appreciate that.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September? A. Yes. By developing any type of an Excel type macro, we could have done that. Q. Without developing that macro, sir, are you able to tell me sitting here today in broad terms what the proportions of the positions in 074C were relating to each of the types of customers you've described to me? MS. BLOOMER: Objection to form.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more specification as to what the proportions of the positions were across the other remaining types of customers you've described to me? MS. BLOOMER: Objection to form. A. It would be it would be just a guess. I would say it's probably Prime Services, Institutional, Barclays Wealth or, you know, it's an impossible question to answer.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September? A. Yes. By developing any type of an Excel type macro, we could have done that. Q. Without developing that macro, sir, are you able to tell me sitting here today in broad terms what the proportions of the positions in 074C were relating to each of the types of customers you've described to me? MS. BLOOMER: Objection to form. Vague and ambiguous. A. I can't tell you what the exact percentages across each of those division is in	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more specification as to what the proportions of the positions were across the other remaining types of customers you've described to me? MS. BLOOMER: Objection to form. A. It would be it would be just a guess. I would say it's probably Prime Services, Institutional, Barclays Wealth or, you know, it's an impossible question to answer. Q. Okay. Thank you. I appreciate that. If you could have paragraph 15 of your declaration in front of you, please, sir.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September? A. Yes. By developing any type of an Excel type macro, we could have done that. Q. Without developing that macro, sir, are you able to tell me sitting here today in broad terms what the proportions of the positions in 074C were relating to each of the types of customers you've described to me? MS. BLOOMER: Objection to form. Vague and ambiguous. A. I can't tell you what the exact percentages across each of those division is in terms of holdings was.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more specification as to what the proportions of the positions were across the other remaining types of customers you've described to me? MS. BLOOMER: Objection to form. A. It would be it would be just a guess. I would say it's probably Prime Services, Institutional, Barclays Wealth or, you know, it's an impossible question to answer. Q. Okay. Thank you. I appreciate that. If you could have paragraph 15 of your declaration in front of you, please, sir. A. Yes.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September? A. Yes. By developing any type of an Excel type macro, we could have done that. Q. Without developing that macro, sir, are you able to tell me sitting here today in broad terms what the proportions of the positions in 074C were relating to each of the types of customers you've described to me? MS. BLOOMER: Objection to form. Vague and ambiguous. A. I can't tell you what the exact percentages across each of those division is in terms of holdings was. Q. Sure. I understand that. Please understand me. I'm not asking for the exact percentages. My question is whether you're able	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more specification as to what the proportions of the positions were across the other remaining types of customers you've described to me? MS. BLOOMER: Objection to form. A. It would be it would be just a guess. I would say it's probably Prime Services, Institutional, Barclays Wealth or, you know, it's an impossible question to answer. Q. Okay. Thank you. I appreciate that. If you could have paragraph 15 of your declaration in front of you, please, sir. A. Yes. Q. In paragraph 15, you describe a bridge account relating to non-PIM 074C customer options, correct?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September? A. Yes. By developing any type of an Excel type macro, we could have done that. Q. Without developing that macro, sir, are you able to tell me sitting here today in broad terms what the proportions of the positions in 074C were relating to each of the types of customers you've described to me? MS. BLOOMER: Objection to form. Vague and ambiguous. A. I can't tell you what the exact percentages across each of those division is in terms of holdings was. Q. Sure. I understand that. Please understand me. I'm not asking for the exact percentages. My question is whether you're able to give me an indication of what those	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more specification as to what the proportions of the positions were across the other remaining types of customers you've described to me? MS. BLOOMER: Objection to form. A. It would be it would be just a guess. I would say it's probably Prime Services, Institutional, Barclays Wealth or, you know, it's an impossible question to answer. Q. Okay. Thank you. I appreciate that. If you could have paragraph 15 of your declaration in front of you, please, sir. A. Yes. Q. In paragraph 15, you describe a bridge account relating to non-PIM 074C customer options, correct? A. Yes, that would be for Prime Services
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	D. DZIEMIAN A. Are you asking whether it would be possible now or was it possible then or when would it be possible? Q. Well, would it have been possible on the 19th of September? A. Yes. By developing any type of an Excel type macro, we could have done that. Q. Without developing that macro, sir, are you able to tell me sitting here today in broad terms what the proportions of the positions in 074C were relating to each of the types of customers you've described to me? MS. BLOOMER: Objection to form. Vague and ambiguous. A. I can't tell you what the exact percentages across each of those division is in terms of holdings was. Q. Sure. I understand that. Please understand me. I'm not asking for the exact percentages. My question is whether you're able to give me an indication of what those percentages may be, understanding that you might	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	D. DZIEMIAN Vague and ambiguous. A. I would say that the LBI affiliates made up the majority of the positions that were held in the customer account. Q. Are you able to give me any more specification as to what the proportions of the positions were across the other remaining types of customers you've described to me? MS. BLOOMER: Objection to form. A. It would be it would be just a guess. I would say it's probably Prime Services, Institutional, Barclays Wealth or, you know, it's an impossible question to answer. Q. Okay. Thank you. I appreciate that. If you could have paragraph 15 of your declaration in front of you, please, sir. A. Yes. Q. In paragraph 15, you describe a bridge account relating to non-PIM 074C customer options, correct? A. Yes, that would be for Prime Services and Institutional.

	Pg 43	OI T	94
	Page 106		Page 107
1	D. DZIEMIAN	1	D. DZIEMIAN
2	the LBI liquidation and its consultants to	2	to distinguish between exchange-traded
3	settle up through LBI with these customers	3	derivatives and over-the-counter derivatives?
4	whenever possible. There are currently	4	And when I'm asking about the ADP
5	unsettled entries relating to certain non-PIM	5	system, I'm talking about as used at Lehman in
6	customer options in the LBI bridge account." Do	6	September 2008.
7	you see that?	7	A. OTC derivatives is not my realm of
8	A. Yes, I do.	8	responsibility. In terms of options on the ADP
9	Q. Do you know how many unsettled entries	9	system, they would typically be set up in a
10	there are in that bridge account, sir?	10	separate identifying range by ADP. They call it
11	A. There are only seven or eight	11	a security number. So it would actually be
12	positions left.	12	within that range that you would have an option
13	Q. Do you know what the value of those	13	set up.
14	positions is, sir?	14	Q. Would you have any problem in creating
15	A. Not exactly, but the net is definitely	15	an ADP Report and excluding from that report
16	under a million dollars.	16	over-the-counter derivatives?
17	MR. OXFORD: Can we go off for a	17	MS. BLOOMER: Objection to form.
18	second?	18	A. Yes, and the way we would do that is
19	(Recess; Time Noted: 12:44 P.M.)	19	by using an ADP Options Trade Date Stock Record
20	(Time Noted: 12:50 P.M.)	20	Report, which OTC derivatives would not be
21	(Exhibit 675A, a document bearing	21	included on.
22	Bates Nos. BCI-EX-00297545, with attachment,	22	MR. OXFORD: Could you read back my
23	marked for identification, as of this date.)	23	question and answer? I just want to make
24	BY MR. OXFORD:	24	sure we were not talking past each other
25	Q. Mr. Dziemian, is the ADP system able	25	there.
	Page 108		Page 109
1	D. DZIEMIAN	1	D. DZIEMIAN
2	(Record read.)	2	A. No.
3	Q. Mr. Dziemian, did you mean to say that	3	MR. OXFORD: Mr. Dziemian, I don't
4	you would have a problem in excluding OTC	4	have any further questions for you at this
5	derivatives or you would not have a problem?	5	time. I appreciate your time and
6	A. Would not.	6	cooperation. Thank you.
7	Q. Thank you. You have in front of you	8	THE WITNESS: Thank you. MR. OXFORD: And for the record, I
8	what I have marked as Exhibit 675A, sir, do you	9	don't think counsel for the other parties
9	see that?	10	have any questions.
10	A. I do.	11	MR. DAKIS: The Committee has no
11	Q. Do you recognize that document?	12	questions.
12	A. I do.	13	MS. CRAWFORD: I have no questions.
13	Q. Can you tell me what it is, please?	14 15	(Time Noted: 12:56 P.M.) oOo
14	A. The report details a reconciliation of	16	000
15	074 activity that occurred after or, from	17	
16	September 23 forward and related back to	18	
17	positions that were formerly held in the LBI	19	
18	processing system.		DANIEL DZIEMIAN
19	The entries in question involve cash	20	Cub south ad and success to
20	in lieu for the most part, where cash was	21	Subscribed and sworn to before me this day
21	settled in lieu of securities and also stock	22	of 2010.
22	loan activity by way of the OCC program that was	23	
23	in effect at Lehman.		
24	Q. Did you rely on this document in	24	
25	creating your declaration, sir?	25	l l

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Page 1
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2
          UNITED STATES BANKRUPTCY COURT
3
          SOUTHERN DISTRICT OF NEW YORK
    In Re:
                                 Chapter 11
5
    LEHMAN BROTHERS
                                 Case No. 08-13555 (JMP)
    HOLDINGS, INC., et al., (Jointly Administered)
6
    ----)
7
8
          * * * HIGHLY CONFIDENTIAL * * *
9
             DEPOSITION OF PAUL EXALL
10
                New York, New York
11
             Thursday, August 27, 2009
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19
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    Reported by:
    FRANCIS X. FREDERICK, CSR, RPR, RMR
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    JOB NO. 24380
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with bonus and severance payments made to

MR. GREEN: Object to the form of

former Lehman employees, right?

the question. That's not all the

Pg 45 of 194 Page 6 Page 7 P. EXALL - HIGHLY CONFIDENTIAL P. EXALL - HIGHLY CONFIDENTIAL 1 2 you what's going to happen here but basically deposition? 3 I'm going to ask you a series of questions. A. Yes, I did. You're under oath. You're going to answer the 4 Q. How did you do that? questions as best you can. 5 A. I obviously met with counsel and At some point during the 6 prepared over the course of the past week. deposition you might hear your attorney voice 7 And I reviewed insofar as I could the an objection to either preserve an objection 8 documentation and events around the time of or challenge a question that I might ask. 9 the acquisition insofar as I could recall them That doesn't relieve you of the obligation to 10 and reference them. answer the question. You still have to answer 11 Q. Okay. Did any of those documents refresh your recollection about anything in the question. I might change the question in 12 response to his deposition -- to his objection connection with this litigation? 13 but unless he instructs you not to answer you 14 Yes, they did. Yes. still have to answer the question. Okay? 5 O. Which documents are those? A. I understand. 16 A. I don't recall. I mean, I read 17 Q. In that regard if I ask a question through a lot of old e-mail correspondence and that's a little bit confusing or I misuse a things like that that I have in relation to 18 term that you folks use or an abbreviation 19 the matter. And I had discussions with people that you folks use, please correct me and ask 20 that assisted me in the preparation of the me to clarify the question. I want to have a 21 spreadsheet. clear question so I can get a clear answer, 2 Q. And you don't have any specific okay? 23 document that refreshed your recollection A. Okay. 24 about that? 25 Q. Did you prepare at all for today's A. Nothing specific. Page 8 Page 9 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL Okay. You're aware that you've 2 schedule says. been asked to appear by Barclays as a 30(b)(6) 3 MR. HINE: Okay. witness on specific topics, correct? 4 Q. But in general you're here to 5 testify about bonus and severance payments A. Yes. 6 O. Okay. Well, let's start off with made to former Lehman employees, right? the 30(b)(6) notice. I'm going to hand you a 7 A. I'm here to represent that -copy of a document marked as Exhibit 279B 8 what's represented on the schedule prepared in 9 which is entitled Debtor's First Rule 30(b)(6) respect to this deposition. 10 **Deposition Notice to Barclays on Issues** Q. Okay. Now, that schedule is the Pertaining to Accrued '08 FY Liability Under 11 schedule -- the spreadsheet referenced in this 12 the Asset Purchase Agreement. Schedule A? 13 And my question is have you ever A. I believe it to be, yes. seen this deposition notice? 14 Q. And then a couple days ago we 15 A. I have. received a replacement or an updated 16 spreadsheet so you understand that that's the Q. Fair to say you reviewed this in 17 preparation for today's deposition? subject of today's deposition as well. A. I have reviewed this, yes. 18 A. I do. Q. And if you look on Schedule A 19 Q. Okay. We'll get to that later. which is the third page you'll see you've been 20 I'm done with that exhibit. 21 designated as a 30(b)(6) witness in connection Well, before I finish on that did

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you undertake any investigation in connection

Q. Well, did you look into any of the

with being a 30(b)(6) witness?

A. What do you mean by that?

	Daga 10		Dago 11
	Page 10		Page 11
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	issues that are embodied in that spreadsheet	2	April 2000?
3	in preparation for today's deposition?	3	A. That's correct.
4	A. I prepared the spreadsheet,	4	Q. And from April 2000 you've been a
5	itself.	5	permanent employee of Barclays; is that right?
6	Q. Okay.	6	A. That's right.
7	A. So I understand the items on it	7	Q. And in what capacity are you
8	and can testify to those.	8	employed by Barclays?
9	Q. Okay. Could you just give me a	9	A. Currently my job title would be
10	little background about yourself? You're a	10	head of compensation analytics across
11	Barclays employee; is that correct?	11	investment banking and investment management.
12	A. Barclays Capital employee, that's	12	Q. How long have you held that
13	correct.	13	position?
14	Q. And how long have you been with	14	A. I would estimate four three,
15	Barclays?	15	four, five years.
16	A. As a permanent employee I've been	16	Q. Okay. And what were you before
17	with Barclays since April 2000. Prior to that	17	that?
18	I consulted with Barclays Capital from around	18	A. I've been a director in HR for
19	June 2008.	19	several years. The job role, itself, has
20	MR. GREEN: You mean 1998? Excuse	20	existed since it sort of it's become a
21	me.	21	formal role so to speak. I've been doing this
22	Q. I think you just lost me.	22	particular function for Barclays Capital, for
23	A. 1998, sorry.	23	BGI, and for Barclays Wealth, over a period of
24	Q. All right. Just so I have it, you	24	time since I joined the HR department.
25	consulted with Barclays from June 1998 to	25	Q. Okay. And is it fair to say that
	Page 12		Page 13
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	you've been in the HR department since you	2	P. EXALL - HIGHLY CONFIDENTIAL IBRAM HR because we span Barclays Global
2	you've been in the HR department since you came to Barclays?		IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group
2 3 4	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially	2	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration
2	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking	2 3 4 5	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group
2 3 4 5 6	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially	2 3 4	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration
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2 3 4 5 6	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into	2 3 4 5 6	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by
2 3 4 5 6 7	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked	2 3 4 5 6 7	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of
2 3 4 5 6 7 8	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I	2 3 4 5 6 7 8	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of
2 3 4 5 6 7 8 9 10 11	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues?	2 3 4 5 6 7 8 9 10 11	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management. Q. Okay. So
2 3 4 5 6 7 8 9 10 11 12	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues? A. Insofar as it related to finance	2 3 4 5 6 7 8 9	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management.
2 3 4 5 6 7 8 9 10 11	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues? A. Insofar as it related to finance matters and books and records of Barclays	2 3 4 5 6 7 8 9 10 11	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management. Q. Okay. So A. That's one of the primary roles. The other functions I perform are some
2 3 4 5 6 7 8 9 10 11 12 13 14	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues? A. Insofar as it related to finance	2 3 4 5 6 7 8 9 10 11 12 13 14	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management. Q. Okay. So A. That's one of the primary roles.
2 3 4 5 6 7 8 9 10 11 12 13 14 15	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues? A. Insofar as it related to finance matters and books and records of Barclays	2 3 4 5 6 7 8 9 10 11 12 13	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management. Q. Okay. So A. That's one of the primary roles. The other functions I perform are some
2 3 4 5 6 7 8 9 10 11 12 13 14	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues? A. Insofar as it related to finance matters and books and records of Barclays Capital, yes.	2 3 4 5 6 7 8 9 10 11 12 13 14	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management. Q. Okay. So A. That's one of the primary roles. The other functions I perform are some analytical modeling around internal
2 3 4 5 6 7 8 9 10 11 12 13 14 15	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues? A. Insofar as it related to finance matters and books and records of Barclays Capital, yes. Q. Well, let me let's take a step	2 3 4 5 6 7 8 9 10 11 12 13 14 15	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management. Q. Okay. So A. That's one of the primary roles. The other functions I perform are some analytical modeling around internal compensation related matters for Barclays
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues? A. Insofar as it related to finance matters and books and records of Barclays Capital, yes. Q. Well, let me let's take a step back. If you were to describe your current	2 3 4 5 6 7 8 9 10 11 12 13 14 15 6	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management. Q. Okay. So A. That's one of the primary roles. The other functions I perform are some analytical modeling around internal compensation related matters for Barclays Capital BGI and Wealth.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues? A. Insofar as it related to finance matters and books and records of Barclays Capital, yes. Q. Well, let me let's take a step back. If you were to describe your current duties, could you just explain to me what your	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management. Q. Okay. So A. That's one of the primary roles. The other functions I perform are some analytical modeling around internal compensation related matters for Barclays Capital BGI and Wealth. Q. You keep saying different entities
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues? A. Insofar as it related to finance matters and books and records of Barclays Capital, yes. Q. Well, let me let's take a step back. If you were to describe your current duties, could you just explain to me what your duties and responsibilities are in your	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management. Q. Okay. So A. That's one of the primary roles. The other functions I perform are some analytical modeling around internal compensation related matters for Barclays Capital BGI and Wealth. Q. You keep saying different entities here. BGI is what?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues? A. Insofar as it related to finance matters and books and records of Barclays Capital, yes. Q. Well, let me let's take a step back. If you were to describe your current duties, could you just explain to me what your duties and responsibilities are in your current position?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 6 17 18 19	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management. Q. Okay. So A. That's one of the primary roles. The other functions I perform are some analytical modeling around internal compensation related matters for Barclays Capital BGI and Wealth. Q. You keep saying different entities here. BGI is what? A. Yes. Just to explain the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues? A. Insofar as it related to finance matters and books and records of Barclays Capital, yes. Q. Well, let me let's take a step back. If you were to describe your current duties, could you just explain to me what your duties and responsibilities are in your current position? A. The primary responsibilities that	2 3 4 5 6 7 8 9 0 11 12 13 14 15 6 17 18 19 20	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management. Q. Okay. So A. That's one of the primary roles. The other functions I perform are some analytical modeling around internal compensation related matters for Barclays Capital BGI and Wealth. Q. You keep saying different entities here. BGI is what? A. Yes. Just to explain the structure of what is known as investment
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues? A. Insofar as it related to finance matters and books and records of Barclays Capital, yes. Q. Well, let me let's take a step back. If you were to describe your current duties, could you just explain to me what your duties and responsibilities are in your current position? A. The primary responsibilities that I assume are I work for Michael Evans as	2 3 4 5 6 7 8 9 10 11 12 13 4 15 16 17 18 19 20 21	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management. Q. Okay. So A. That's one of the primary roles. The other functions I perform are some analytical modeling around internal compensation related matters for Barclays Capital BGI and Wealth. Q. You keep saying different entities here. BGI is what? A. Yes. Just to explain the structure of what is known as investment banking and investment management if you
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 22	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues? A. Insofar as it related to finance matters and books and records of Barclays Capital, yes. Q. Well, let me let's take a step back. If you were to describe your current duties, could you just explain to me what your duties and responsibilities are in your current position? A. The primary responsibilities that I assume are I work for Michael Evans as the global head of HR across investment bank,	2 3 4 5 6 7 8 9 0 11 12 13 14 15 16 17 18 19 20 21 22 22	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management. Q. Okay. So A. That's one of the primary roles. The other functions I perform are some analytical modeling around internal compensation related matters for Barclays Capital BGI and Wealth. Q. You keep saying different entities here. BGI is what? A. Yes. Just to explain the structure of what is known as investment banking and investment management if you look in the books in the published report
2 3 4 5 6 7 8 9 10 11 12 13 14 15 6 17 18 19 20 21 22 23	you've been in the HR department since you came to Barclays? A. No, that's not correct. Initially in 2008 I joined the investment banking finance department which then amalgamated into the finance global department. And I worked there until approximately July 2001 when I transferred down to HR. Q. Did any of your work prior to July 21 involve compensation issues? A. Insofar as it related to finance matters and books and records of Barclays Capital, yes. Q. Well, let me let's take a step back. If you were to describe your current duties, could you just explain to me what your duties and responsibilities are in your current position? A. The primary responsibilities that I assume are I work for Michael Evans as the global head of HR across investment bank, management. My primary duties involve and	2 3 4 5 6 7 8 9 0 11 12 13 14 15 16 17 18 19 20 21 22 23	IBRAM HR because we span Barclays Global Investors and Barclays Wealth, with the group HR function and the board HR and remuneration committee of Barclays PLC. So any compensation matters that require approval by the remuneration committee under its terms of reference as a committee of the board of Barclays, those matters come through me subject to approval by management. Q. Okay. So A. That's one of the primary roles. The other functions I perform are some analytical modeling around internal compensation related matters for Barclays Capital BGI and Wealth. Q. You keep saying different entities here. BGI is what? A. Yes. Just to explain the structure of what is known as investment banking and investment management if you look in the books in the published report of the accounts of Barclays PLC there's

Page 14 Page 15 1 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 2 group center. Investment Banking and 2 Okay. So Mr. Evans is -- and what 3 Investment Management comprise the three 3 is his title? A. Mr. Evans is -- amongst other 4 businesses run by Mr. Diamond. Barclays 4 5 5 Capital, Barclays Global Investors, now things he's responsible for several 6 subject to the sale to Blackrock, and Barclays 6 departments. I'll probably to get this wrong but in my capacity he's global head of human Wealth. 7 8 8 Q. And your primary role is with that resources across global investment global 9 9 group? management. 10 A. That's correct. 10 Q. So you report to him? And other groups you have a role 11 11 O. A. I do. 12 12 Q. Do you report to anyone else or not? 13 13 A. No. directly? 14 Q. Okay. So did I understand you 14 A. Not directly. 15 correctly that you interface between that 15 Q. Okay. 16 group, the one run by Mr. Diamond, with 6 MR. GREEN: Bill, I just want to 17 respect to compensation matters to the 17 without giving a long speech say that 18 committee of the board who approves when you're getting background from Paul 18 19 compensation; is that right? 19 of his understanding of the 20 A. Yes. I do not liaise directly 20 organization, I mean this is just with them. We go through obviously our own 21 background from him. He's not speaking 22 management who represent us on that committee. as a 30(b)(6) deponent in terms of 22 23 And I liaise with the group HR function who taking a position for the company on 23 24 again represent them and others on that what the organizational structure is. 24 25 25 committee. MR. HINE: Fair enough. Page 17 Page 16 1 1 P. EXALL - HIGHLY CONFIDENTIAL P. EXALL - HIGHLY CONFIDENTIAL 2 2 Agreement; is that right? MR. GREEN: All right. 3 3 MR. GREEN: Objection to the form BY MR. HINE: Q. So, Mr. Exall, could you explain of the question. You may answer. 4 4 5 to me -- you're aware that this whole Could you repeat the question, 5 6 proceeding and these depositions have to do 6 please? 7 with the sale -- a transaction between Lehman 7 Q. You were not involved, am I right, 8 8 and Barclays that closed on or around in the negotiations or discussions concerning 9 September 22nd, 2008, correct? 9 the compensation provisions that later made 10 their way into the Asset Purchase Agreement in 10 A. I understand that, yes. 11 1 Q. Okay. Could you just describe for this case; is that right? 12 12 me generally any role you played in connection A. That is right. I was not with that transaction through -- what I'm 13 13 involved. 14 asking about is any role you played in the 14 Q. Okay. And how did you learn about 15 negotiations of the transaction or the closing the compensation provisions that are embodied 15 16 16 or anything else related to it. in the Asset Purchase Agreement? 17 17 MR. GREEN: Object to the form. MR. GREEN: Object to the form. 18 A. I was passed a copy of the 18 You may answer. 19 purchase agreement by some colleagues in the 19 A. I played no role whatsoever in any 20 negotiations whatsoever. 20 finance department. Q. Okay. So -- and, again, I just 21 21 Q. Okay. 22 want to get a sense of your general background 22 A. And reading that and -- I came to 23 here. You were not involved in discussions understand that there were some provisions in 23 24 there in relation to compensation. 24 concerning the compensation provisions that 25 25 later made their way into the Asset Purchase Q. Okay. And were you passed -- when

Page 18 Page 19 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 2 2 were you passed that agreement? of the first amendment to the Asset Purchase 3 A. I can't recall the exact date but 3 Agreement? 4 A. I don't believe so, no. it would have been on or around the 22nd of 4 5 September or shortly thereafter. 5 Q. Okay. Fair to say you don't have 6 Q. Okay. And did you need to consult any use for that document in connection with 6 that agreement to do your job from then on? 7 the work you've performed with respect to A. It was a point of reference, yes. compensating former Lehman employees? 8 8 Q. Okay. Were you passed any other 9 MR. GREEN: Object to the form of 9 10 documents related to compensation in 10 the question. 1 connection with this transaction? 11 MR. HINE: It was a bad question. L2 12 A. Yes. Let me try again. Q. Is it fair to say you haven't had 13 O. Like what? 13 A. I requested to see a copy of the 4 14 need to consult with the first amendment of schedule referred to in the APA. .5 15 the APA in connection with the work you 6 Q. Okay.A. The sale agreement. 16 performed with respect to compensation for 17 17 former Lehman employees? 18 O. Okav. 18 A. I did not consult it. A. And I was passed what was 19 19 O. Okav. represented to me as being that schedule. 20 A. Consequently, I do not know if I 20 Q. Okay. Anything else? 21 21 needed to. A. I don't recall getting any other 22 22 Q. Okay. Fair enough. specific sale-related documentation in that Have you ever seen a document 23 23 24 24 regard, no. called a clarification letter that was agreed 25 25 to between Barclays and Lehman in connection Q. Okay. Have you ever seen a copy Page 21 Page 20 1 1 P. EXALL - HIGHLY CONFIDENTIAL P. EXALL - HIGHLY CONFIDENTIAL 2 2 you prepared in the normal course of your with the Asset Purchase Agreement? 3 A. I don't recall specifically seeing 3 employment? A. It was prepared in the normal that document. I know of its existence but I 4 4 5 5 don't recall actually either seeing it or course of business in support of various 6 having read it in any great detail. 6 requirements from PriceWaterhouseCoopers as 7 7 O. Okav. part of their annual audit as well as the 8 ancillary or related regulatory filings that 8 A. If I did see it. 9 9 Q. Do you have any understanding of they may or may not have had to prepare. Q. So when was it prepared? 10 its purpose? 10 MR. GREEN: Object to the form. 11 A. No. Not particularly. 11 Q. Do you have any understanding of 12 12 You mean the spreadsheet? When was the how it relates in any way, if at all, to original spreadsheet prepared? 13 13 MR. HINE: Well, we'll just wait 14 compensation issues? 14 till I get to the spreadsheet. I just 15 15 No. Α. 16 16 want to get some background here. Q. Okay. Is it fair to say that you've been able to do your job with respect 17 Q. We'll put that question aside. 17 So when did you learn of the to compensation of former Lehman employees 18 18 19 without consulting the clarification letter? 19 Lehman/Barclays sale transaction? 20 A. I believe so. 20 A. I learned -- I don't recall Q. Okay. And I believe you said 21 21 actually specifically learning when it 22 earlier that you prepared the spreadsheet that 22 occurred. I was aware that the initial 23 we're going to be discussing here today? 23 discussions were being held in New York amongst various parties in relation to the 24 A. I did. 24 Q. Okay. And is that something that 25 original form of the transaction whereby, I

Pg 49 of 194 Page 35 Page 34 1 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 2 2 you speculate you would have talked about. been concluded by the time I had come to New 3 But do you recall any discussions between any 3 York and was beginning to assist Mr. Evans in 4 of your senior Barclays management about what 4 whatever he needed me to do. And it was my 5 was being discussed or contemplated in 5 understanding that the transaction was closed 6 connection with compensation-related issues 6 at that point. 7 concerning the Lehman Barclays proposed 7 Q. And at that point do you recall 8 transaction? 8 the date you were --9 9 MR. GREEN: These are discussions A. I look back -- I think it was on 10 10 between Paul and senior management or around the 20th or 21st of September that I 11 you're asking about. 11 came across. I forget the exact date but I 12 MR. HINE: Yes. 12 believe it was on or around there. 13 A. Sorry. So let me just be clear. 13 O. Okav. So you thought the 14 You're asking do I know of any discussions 14 transaction had closed by then? 15 that my senior management may have had with 15 A. It was my general understanding 16 Lehman Brothers? 16 that the transaction for all intents and 17 17 purposes had been completed the prior week. I Q. No, no, no. I'm asking did you 18 have any conversations with senior management 18 have subsequently come to understand that 19 during that week, September 15th through 19 there was a clarification agreement and 20 September 22nd, about the compensation issues 20 officially the judge may have sanctioned at a 21 21 that were being discussed or considered in later date. You know, the legalities for me 22 connection with the Lehman Barclays 22 are neither here nor there. My understanding is that the transaction had been concluded in 23 transaction? 23 24 A. I don't recall anything specific. all material respects at that point. 24 25 25 I do know that the initial sale agreement had Q. Okay. Did you have any Page 37 Page 36 1 1 P. EXALL - HIGHLY CONFIDENTIAL P. EXALL - HIGHLY CONFIDENTIAL 2 MR. GREEN: Are you ready, Paul? 2 understanding during that period about the \$2 3 billion compensation figure that appeared on 3 THE WITNESS: Yeah. the schedule that you had referenced earlier? 4 Q. Now, my previous question had to 4 MR. GREEN: Could you show him 5 do with the schedule. We'll call this the 5 6 6 9/16 schedule if you will. Do you see the \$2 that figure? 7 7 MR. HINE: Okay. Let's get to billion compensation number in that schedule? 8 8 the -- let's get to that. A. I do. 9 9 MR. GREEN: Just so it's clear Okay. Did you, during the week of what we're talking about. 10 10 September 15th to the 22nd say, did you have 11 11 MR. HINE: Let's get to the any conversations with any of Barclays senior 12 12 management about that \$2 billion comp figure? schedule. 13 13 A. I was made aware of this schedule BY MR. HINE: 14 Q. Mr. Exall, I'm going to hand you a 14 during that week. 15 copy of a document that's previously been 15 Q. Um-hum. 16 marked as Exhibit 1 which is a copy of the 16 A. And I'm certain I would have asked 17 **Asset Purchase Agreement which I think you've** 17 someone questions with respect of the schedule 18 been discussing. Just so you have it in front 18 and what I understood it -- you know, what I 19 19 of you. And I'm also going to give you a copy needed to interpret from it. But, yes, in 20 of a document that's been marked as Exhibit 19 20 general I would have had conversations with 21 21 which I understand is the schedule that is people on this. 22 referenced in the APA. If you want just take 22 Q. Okay. And who gave you the

23

24 25 schedule?

A. Mr. Clackson passed me the

23

24

a couple minutes to refresh -- review these

documents and I'll ask you some questions.

(Document review.)

Page 39 Page 38 P. EXALL - HIGHLY CONFIDENTIAL P. EXALL - HIGHLY CONFIDENTIAL 1 1 2 2 Q. And what did he tell you about it? provided a copy of the APA? 3 A. He represented this as being the 3 A. Yes. Q. And who gave you that? 4 schedule referred to in the APA. 4 5 5 Okay. And you were looking down. A. I believe Mr. Gary Romaine gave me 6 6 I think -- are you looking at Section 9.1(c) a copy of the APA. 7 of the APA? Q. Okay. And why did he give it to 8 8 A. That is correct. you? 9 Q. Okay. So this Exhibit 19 is the 9 MR. GREEN: Object to the form. 0 schedule -- or you understood that the A. He understood there to be 10 1 **Exhibit 19 is the schedule referred to in** 11 compensation related matters that I would 2 12 probably be -- need to be aware of. paragraph 9.1(c) of the APA, correct? MR. GREEN: Object to the form. Q. Okay. And I take it you reviewed .3 13 14 the APA after receiving a copy of it. 4 A. This is a copy of the schedule that was represented to me as being the 5 15 A. In general, yes. I can't testify 6 schedule referred to, correct. to having read it in any great depth. I read 16 7 Q. Okay. What did Mr. Clackson tell 17 I think the sections in relation to me and . 8 vou about that schedule? 18 probably, to put a word on it, skimmed the 19 19 MR. GREEN: Object to the form. rest. Asked and answered. You may answer. 20 20 Q. Okay. I'm not trying to be tricky 21 21 A. I don't recall what he told me here but is it fair to say you focused on about it. I asked him for a copy of it as 22 22 Section 9.1 of the APA and probably skimmed part of my own reading of the relevant 23 23 the rest of it? 24 sections of the APA. 24 MR. GREEN: Object to the form. 25 Q. Okay. And you had been previously 25 You may answer. Page 40 Page 41 P. EXALL - HIGHLY CONFIDENTIAL 1 1 P. EXALL - HIGHLY CONFIDENTIAL 2 2 of the former Lehman Brothers employees that A. Yes. I think that would be 3 reasonably accurate. 3 Barclays Capital or Barclays acquired under Q. Okay. Well, let's just take a the transaction. The meaning of transferred 4 4 look at 9.1 for a minute. If you wouldn't 5 employee in the sense of this agreement or any 5 mind turning to 9.1(a). 9.1(a), as I 6 6 other document I can't testify to not being a 7 understand it, has to do with Barclays 7 lawyer and I just have no legal understanding offering employment to certain individuals who 8 8 of that. 9 are defined as transferred employees. 9 Q. Okay. So the term -- the defined 10 term transferred employees is not something Do you see that definition in 10 11 11 there? you use in the normal course of your business? A. Not in the normal course of my 12 12 A. I see the term transferred 13 employee referred to. 13 business, no. 14 Q. Okay. Is that a term you're 14 Q. Okay. familiar with? 15 15 Do you know how many employees -well, let's just explore this for a minute. 16 A. No. 16 17 You work on compensation issues related to 17 Q. Well, I guess the reason I'm asking is you're charged with supervising 18 former Lehman employees who transferred to 18 compensation issues with respect to 19 19 Barclays, correct? 20 transferred employees, right? 20 A. Compensation of former Lehman 21 MR. GREEN: Object to the form of 21 employees that came to work for Barclays. 22 the question. I think that 22 Q. Okay. Now, do you know how many mischaracterizes his prior testimony. 23 23 of those folks there are? A. I would say that part of my A. I recall, and I'm approximating 24 24 responsibility is in relation to compensation 25 25 here, that there were in excess of 10,000

Page 51 Page 50 1 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 2 2 has been complied with by Barclays with doesn't refer to the schedule that we talked 3 3 respect to former Lehman employees? about earlier, right, that September 16th MR. GREEN: Object to the form of 4 4 schedule? the question. Calls for a legal 5 5 MR. GREEN: Object to the form. A. I don't see any specific reference 6 6 conclusion. 7 A. I don't know whether this or any 7 to it. other clause has been complied with. 8 8 Q. Okay. Now, if we turn to 9.1(c) 9 9 that has to do with bonus payments, correct? Q. Okay. 10 A. I don't know what Barclays' 10 In general? obligations are under these. What I do know 11 11 MR. GREEN: Object to the form of is that when individuals across the firm have 12 12 the question. 13 13 been affected by a reduction in force exercise A. Again, I can't interpret the clause. I see the word bonus, annual bonuses 14 they are subject to -- for consideration to 14 15 severance payments in the normal course of 15 reflected in the clause. But as to what it 16 may or may not refer to I really can't testify 16 business. 17 17 Q. Okay. And I believe you said that in any legal capacity. 18 you believe that's been done in accordance 18 Q. I understand. I'm not asking for 19 your legal interpretation. I'm asking as a 19 with the former Lehman's policies? 20 general matter as a person charged with 20 A. I believe that for former Lehman 21 compensation issues and working with this 21 Brothers employees the former Lehman Brothers 22 stuff. Do you have a general understanding of 22 policy has been applied. 23 what this provision (c) entails in connection 23 Q. Okay. 24 24 That's my understanding. with bonuses that were to be paid to former A. Q. Okay. Now, this provision, 9.1(b) 25 25 Lehman employees? Page 52 Page 53 P. EXALL - HIGHLY CONFIDENTIAL 1 1 P. EXALL - HIGHLY CONFIDENTIAL 2 the question. Calls for a legal 2 MR. GREEN: Object to form. 3 Do you have the question in mind? 3 conclusion. 4 THE WITNESS: I'm just re-reading 4 A. It refers to a schedule. And the 5 5 schedule, itself, does not have the word bonus the clause. 6 6 A. Could you perhaps rephrase the anywhere on it. 7 question? 7 Q. Okay. 8 Q. Yeah. Let's try again. 8 A. So I can't reach a conclusion as 9 What is your understanding -- and 9 to any -- in any capacity, personal, private, 10 I understand you're not a lawyer and I'm not 10 on behalf of the company, as to what quantum 11 asking for a legal conclusion as to this 11 of bonus may or may not be referred to in this 12 paragraph. But what is your understanding 12 about the amount of bonuses that are supposed 13 13 Q. Okay. I understand. I'm not 14 to be paid, were supposed to have been paid to 14 asking for a legal interpretation. But in the 15 former Lehman employees who now are with 15 course of preparing the spreadsheet that we're 16 16 going to talk about and your work in **Barclays?** 17 17 connection with compensation related to these A. I don't understand anything in respect of this clause that refers to any 18 former Lehman employees, what did you 18 understand the \$2 billion was supposed to 19 amount, quantum of bonus whatsoever. 19 20 Q. Well, but it does refer to the 20 cover? 21 21 schedule, right? MR. GREEN: Object to the form of A. It refers to a schedule, yes. 22 22 the question. Q. Okay. And what did you understand 23 23 Q. And when I say \$2 billion I'm that to mean when it refers to that schedule? 24 referring to the 2 billion in the schedule, 24

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MR. GREEN: Object to the form of

the September 16th schedule.

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Page 54 Page 55 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 2 2 that would encompass things like salary, MR. GREEN: Object to the form of 3 3 the question. annual bonus, deferred stock, deferred cash. 4 A. Again -- and to reiterate, I 4 Benefits. Pensions. Recruit -- you know, I 5 5 cannot pass a legal opinion as to what the would say that there's no standard definition 6 obligations of Barclays may or may not be. It 6 of what is termed as compensation in either 7 is my personal view, and that may be different 7 the accounting environment or in the human 8 8 to the views of Barclays or anyone else in resources environment. But my personal 9 9 Barclays that \$2 billion is referred to as understanding is that compensation is any form 10 10 comp. And my understanding in a personal of a award delivered to or on behalf of a capacity is that refers to compensation in all 11 11 employee. Or to their benefit. 12 12 its forms. Q. Okay. I really didn't ask the 13 13 definition of compensation. I'm trying to Q. In all its forms. Meaning what? L 4 A. In respect of pre-acquisition 14 find out what in preparing the spreadsheet 15 service of the former Lehman Brothers 15 that we're going to talk about today and in 16 16 your work in connection with providing employees. 17 17 Q. What do you mean by compensation compensation to the former Lehman employees, 18 in all its forms? 18 is that \$2 billion supposed to cover more than 19 19 A. Again, I'm speaking in my personal bonuses? 20 20 capacity as opposed to on behalf of Barclays. MR. GREEN: Object to the form of 21 21 Their definition of compensation may be the question. I think you did ask about his understanding of the term 22 22 different than mine. 23 23 compensation to begin with so I think I understand personally 24 compensation to mean any manner of awards and 24 the lead-in to your question was inappropriate. But, nevertheless, you 25 payments and reward to employees in general 25 Page 56 Page 57 1 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 2 can answer the question. 2 the amount of compensation that's supposed to 3 A. I can testify to the schedule, 3 be paid to former Lehman employees? itself, that's the subject of this deposition 4 4 A. No. 5 which reflects the compensation delivered, the 5 Q. Further into this paragraph you 6 wide discharge of compensation delivered to see -- and I'm reading starting on the seventh 6 7 former Lehman Brothers employees in respect of 7 line down onto the eighth line it talks about 8 their pre-acquisition service to Lehman 8 forms and proportions as are consistent with 9 Brothers. 9 purchaser's customary practices. 10 10 And it's referring to the annual Q. But, Mr. Exall, you have no 11 understanding of what that \$2 billion was 11 bonuses. Do you see that sentence? 12 12 supposed to encompass in connection with A. I do. 13 compensation to former Lehman employees? 13 Q. What is -- just based on your 14 A. I don't see it defined in the 14 experience at Barclays, what is form and 15 proportions -- or what is Barclay's customary agreement and I can't interpret it. 15 16 Q. Okay. When you were asked to 16 practice with respect to annual bonuses? 17 17 prepare the schedule, were you told that it MR. GREEN: Object to the form of 18 should total up to \$2 billion? 18 the question as to the extent it calls 19 A. No. 19 for a legal conclusion. 20 20 A. Our customary practice prior to Q. Were you told what the amount is that in aggregate were supposed to have been 21 2008 in terms of annual bonus awards at 21 22 paid in any form of compensation to former 22 Barclays Capital --Lehman employees? 23 23 Q. Right. 24 A. No. 24 A. -- in general their annual bonuses 25 25 were delivered in the form of either cash or Q. Do you have any understanding of

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Q. Right.

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A. Whereby above a certain threshold an amount of the annual bonus was deferred or delivered through a stock vehicle which would, based at the time, through a tax table kind of approach so above a certain threshold a proportion was deferred or delivered in stock and beyond a certain -- another step more stock was delivered.

Q. Okay. And was this -- when you said tax table vou threw me there. What did vou mean there?

A. Sorry. It's a term I use. I shouldn't use it. We colloquially refer to it as a tax table. It's in effect if your bonus is X, then there is no deferral into stock. If it's above a certain threshold, a certain proportion of the entire bonus is delivered in stock. If it's above another threshold, further proportion of that bonus is delivered in stock.

Q. Okay. And as a general matter what percentage of bonus is provided in stock?

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A. In general, our customary practice prior to 2008 was that any bonus -- and there were regional fluctuations here based on the exchange rate -- so I will quote this in pounds. Any bonus below 150,000 pounds sterling there was no deferral or no delivery in stock. Any amounts above 150,000 pounds but below 250,000 pounds of annual bonus, 10 percent of the entire amount was delivered in stock. Any amounts over and above 250,000 pounds, the first 250,000 pounds were delivered -- 10 percent of that was delivered in stock. Any amount above 250,000 25 percent was delivered in stock.

O. And this stock vested over time?

A. That's correct. Subject to the rules of the stock -- of the plan itself, the standard practice was to cliff vest at the end of a three-year period.

Q. Okay. I saw that term cliff vest. What does many mean?

A. In general that means that it vests in equal tranches, so to speak, so some of our competitors in a stock award would --

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let's say, as an example, if you had a hundred pounds of an amount deferred into stock, vesting over four years, if -- you can either have pro rata vesting which is you could take a quarter, a quarter, and 25 would accrue at the end of one, 25 after -- et cetera.

Cliff vesting means that it only vests at the end of the period concerned. So you'd only get the full hundred in this example at the end of the fourth year.

Q. And it was a custom to have a three-year cliff vest period for stock bonuses?

A. It was our custom, yes.

Q. All right. And has this changed since 2008? You said prior to 2008.

A. 2008 was a unique year for compensation and we delivered at Barclays Capital -- at Barclays in a different way subject to a different type of arrangement.

Q. Are you talking about the former Lehman employees when you say that or --

A. No. They were subject to our

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- P. EXALL HIGHLY CONFIDENTIAL standard practice that was employed prior to this.
- Q. Okay. So as a general matter, and I know there's individuals, but as a general rule this practice -- the prior practice that you just described was applied to the former Lehman employees that came to work at **Barclays?**
- A. I believe that to be the case yes, in most cases, yeah.

(Deposition Exhibit 280B, document bearing production number BCI-EX-00077287, marked for identification as of this date.) (Deposition Exhibit 281B, document bearing production number BCI-EX-00115843, marked for identification as of this date.)

BY MR. HINE:

Q. Mr. Exall, I'm handing you two exhibits. One is marked as Exhibit 280B which is Bates stamped BCI-EX-00077287 which I understand to be the original version of the schedule that was provided to us. And the

	Py 54	1 01 .	
	Page 62		Page 63
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	second document is marked as Exhibit 281B	2	that time, although we were still
3	which is Bates stamped BCI-EX-00115843 which,	3	investigating certain items reflected on the
4	Chris, I think you'll agree is the updated	4	schedule. Subsequent to those investigations
5	schedule that was recently provided to us.	5	and the correction of a couple of
6	My first question, Mr. Exall, have	6	typographical errors as well as some of the
7	you ever seen these documents before?	7	text was cut off from the narrative on the
8	A. Yes.	8	right-hand side of the original schedule, the
9	Q. You prepared these documents?	9	updated schedule reflects a more accurate
10	A. I did.	10	an accurate picture of the discharge of those
11	Q. Okay. I want to and am I		compensation items as of the date it was
12	correct that 281B is an updated replacement	12	produced.
13	version of 280B?	13	<u> </u>
14	A. Yes.	14	Q. Okay. Now, other than typos is it fair to say the main differences have to do
15		15	
16	Q. Okay. Before we put away 280B		with severance entries?
17	could you explain to me the differences and	16 17	A. Yes.
\	why you had to update it?		Q. Okay. Just take a step back a
18	A. Sure. 280B as you referred to	18	minute. Why was this schedule and I'll
19	here was the original schedule provided around	19	refer to them generically now, why was this
20	the middle of July I understand. It reflected	20	schedule prepared?
21	what we believed to be an accurate picture of	21	A. The schedule was prepared in the
22	the discharge of compensation to previous	22	normal course of business to support the or
23	former Lehman Brothers employees in respect of	23	for production to primarily for production
24	their prior pre-acquisition service.	24	to PriceWaterhouseCoopers as part of their
25	It was thought to be accurate at	25	annual audit as well as any ancillary filings
	Page 64		Page 65
1			
1 2	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	P. EXALL - HIGHLY CONFIDENTIAL they may or may not have had to provide as	1 2	P. EXALL - HIGHLY CONFIDENTIAL finance department requested this type of
2	P. EXALL - HIGHLY CONFIDENTIAL they may or may not have had to provide as part of their normal course of business as	1	P. EXALL - HIGHLY CONFIDENTIAL finance department requested this type of schedule from your department?
2 3 4	P. EXALL - HIGHLY CONFIDENTIAL they may or may not have had to provide as part of their normal course of business as auditors of Barclays.	1 2 3 4	P. EXALL - HIGHLY CONFIDENTIAL finance department requested this type of schedule from your department? A. Mr. Romaine requested it of me,
2 3 4 5	P. EXALL - HIGHLY CONFIDENTIAL they may or may not have had to provide as part of their normal course of business as auditors of Barclays. Q. Okay. So this is someone from PwC	1 2 3 4 5	P. EXALL - HIGHLY CONFIDENTIAL finance department requested this type of schedule from your department? A. Mr. Romaine requested it of me, yes.
2 3 4 5 6	P. EXALL - HIGHLY CONFIDENTIAL they may or may not have had to provide as part of their normal course of business as auditors of Barclays. Q. Okay. So this is someone from PwC requested a schedule of compensation related	1 2 3 4 5 6	P. EXALL - HIGHLY CONFIDENTIAL finance department requested this type of schedule from your department? A. Mr. Romaine requested it of me, yes. Q. Okay. Any other purpose behind
2 3 4 5 6 7	P. EXALL - HIGHLY CONFIDENTIAL they may or may not have had to provide as part of their normal course of business as auditors of Barclays. Q. Okay. So this is someone from PwC requested a schedule of compensation related to the Lehman acquisition?	1 2 3 4 5 6 7	P. EXALL - HIGHLY CONFIDENTIAL finance department requested this type of schedule from your department? A. Mr. Romaine requested it of me, yes. Q. Okay. Any other purpose behind this other than to assist PwC?
2 3 4 5 6 7 8	P. EXALL - HIGHLY CONFIDENTIAL they may or may not have had to provide as part of their normal course of business as auditors of Barclays. Q. Okay. So this is someone from PwC requested a schedule of compensation related to the Lehman acquisition? A. I was instructed that this would	1 2 3 4 5 6 7 8	P. EXALL - HIGHLY CONFIDENTIAL finance department requested this type of schedule from your department? A. Mr. Romaine requested it of me, yes. Q. Okay. Any other purpose behind this other than to assist PwC? A. No. The primary purpose of this
2 3 4 5 6 7 8 9	P. EXALL - HIGHLY CONFIDENTIAL they may or may not have had to provide as part of their normal course of business as auditors of Barclays. Q. Okay. So this is someone from PwC requested a schedule of compensation related to the Lehman acquisition? A. I was instructed that this would be needed in support of the annual audit and	1 2 3 4 5 6 7 8	P. EXALL - HIGHLY CONFIDENTIAL finance department requested this type of schedule from your department? A. Mr. Romaine requested it of me, yes. Q. Okay. Any other purpose behind this other than to assist PwC? A. No. The primary purpose of this was to assist PwC.
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2 3 4 5 6 7 8 9 10	P. EXALL - HIGHLY CONFIDENTIAL they may or may not have had to provide as part of their normal course of business as auditors of Barclays. Q. Okay. So this is someone from PwC requested a schedule of compensation related to the Lehman acquisition? A. I was instructed that this would be needed in support of the annual audit and other related filings by my finance colleagues.	1 2 3 4 5 6 7 8 9 10	P. EXALL - HIGHLY CONFIDENTIAL finance department requested this type of schedule from your department? A. Mr. Romaine requested it of me, yes. Q. Okay. Any other purpose behind this other than to assist PwC? A. No. The primary purpose of this was to assist PwC. Q. Any other purposes? A. I think we in general in support
2 3 4 5 6 7 8 9 10 11	P. EXALL - HIGHLY CONFIDENTIAL they may or may not have had to provide as part of their normal course of business as auditors of Barclays. Q. Okay. So this is someone from PwC requested a schedule of compensation related to the Lehman acquisition? A. I was instructed that this would be needed in support of the annual audit and other related filings by my finance colleagues. Q. Who told you that?	1 2 3 4 5 6 7 8 9 10 11	P. EXALL - HIGHLY CONFIDENTIAL finance department requested this type of schedule from your department? A. Mr. Romaine requested it of me, yes. Q. Okay. Any other purpose behind this other than to assist PwC? A. No. The primary purpose of this was to assist PwC. Q. Any other purposes? A. I think we in general in support of our own internal accounting records would
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	P. EXALL - HIGHLY CONFIDENTIAL they may or may not have had to provide as part of their normal course of business as auditors of Barclays. Q. Okay. So this is someone from PwC requested a schedule of compensation related to the Lehman acquisition? A. I was instructed that this would be needed in support of the annual audit and other related filings by my finance colleagues. Q. Who told you that? A. Mr. Romaine. Q. Romaine? A. Gary Romaine.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	P. EXALL - HIGHLY CONFIDENTIAL finance department requested this type of schedule from your department? A. Mr. Romaine requested it of me, yes. Q. Okay. Any other purpose behind this other than to assist PwC? A. No. The primary purpose of this was to assist PwC. Q. Any other purposes? A. I think we in general in support of our own internal accounting records would have prepared the schedule. But the primary purpose would be to support the annual audit and regulatory filings that were required.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	P. EXALL - HIGHLY CONFIDENTIAL they may or may not have had to provide as part of their normal course of business as auditors of Barclays. Q. Okay. So this is someone from PwC requested a schedule of compensation related to the Lehman acquisition? A. I was instructed that this would be needed in support of the annual audit and other related filings by my finance colleagues. Q. Who told you that? A. Mr. Romaine. Q. Romaine? A. Gary Romaine. Q. Okay. And he is what was his	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	P. EXALL - HIGHLY CONFIDENTIAL finance department requested this type of schedule from your department? A. Mr. Romaine requested it of me, yes. Q. Okay. Any other purpose behind this other than to assist PwC? A. No. The primary purpose of this was to assist PwC. Q. Any other purposes? A. I think we in general in support of our own internal accounting records would have prepared the schedule. But the primary purpose would be to support the annual audit and regulatory filings that were required. MR. GREEN: Bill, I'm sorry.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	P. EXALL - HIGHLY CONFIDENTIAL they may or may not have had to provide as part of their normal course of business as auditors of Barclays. Q. Okay. So this is someone from PwC requested a schedule of compensation related to the Lehman acquisition? A. I was instructed that this would be needed in support of the annual audit and other related filings by my finance colleagues. Q. Who told you that? A. Mr. Romaine. Q. Romaine? A. Gary Romaine. Q. Okay. And he is what was his position?	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	P. EXALL - HIGHLY CONFIDENTIAL finance department requested this type of schedule from your department? A. Mr. Romaine requested it of me, yes. Q. Okay. Any other purpose behind this other than to assist PwC? A. No. The primary purpose of this was to assist PwC. Q. Any other purposes? A. I think we in general in support of our own internal accounting records would have prepared the schedule. But the primary purpose would be to support the annual audit and regulatory filings that were required. MR. GREEN: Bill, I'm sorry. Could we go off the record for one
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Page 71 Page 70 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 2 2 O. Okay. A. There was no regular requirement A. During that period, yes. 3 3 to update it. There were certain points of 4 time that an update was required and as part 4 Q. Okay. And it's gone on through a 5 of the -- whether it be the annual report from 5 couple iterations between Q4 '08 and mid July PriceWaterhouse or anything else in respect of of '09; is that right? 6 6 7 what they were looking at or passing an 7 A. Of course. 8 opinion on. So there are points in time at 8 Q. Okay. And the iteration following which a schedule would have been updated and the mid July version which is Exhibit 280B, 9 9 what I have in front of me as 280B -- 281B? 10 presented formally to them. I know they've 10 had a copy I believe of this schedule. I'm 1 11 A. 281B, yes. not sure whether they have a copy of 281B. 12 12 Q. Okay. Were there no iterations O. So when you said this schedule you L 3 13 between these two? 14 meant 280B? 14 A. That was the iteration. 15 L 5 A. I meant 280B, yes. Q. Okay. Q. Okay. Now, did you start 16 16 A. We updated this Schedule 280B. preparing a schedule in this form or like this 17 17 It's now become 281B. starting in September of 2008? 18 18 MR. HINE: Okay. Chris, we're RQ A. I don't recall the exact time when 19 going to request copies of all these 19 iterations going back to the fourth 20 we first produced the -- a first iteration of 20 21 quarter of '08 just as part of our 21 the schedule or its predecessor without guessing or consulting prior records, but what 22 document requests. 22 I can say is that this schedule was -- or its MR. GREEN: We'll take that 23 23 predecessor would have been prepared in Q4 request under advisement. 24 24 25 25 2008. MR. HINE: Okay. Page 72 Page 73 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 Q. All right. Was either 280B or 2 for several months now, correct? 2 3 281B prepared in any way in connection with 3 A. That would be correct. the discovery we're undertaking here in this 4 4 Since fourth quarter of '08, 0. 5 5 litigation? right? 6 MR. GREEN: Object to the form of 6 Yes. 7 the question to the extent it calls for 7 Q. Were you ever asked to modify the schedule in response to anything that was 8 a legal conclusion. 8 taking place in this litigation here in the 9 A. That is not my understanding. 9 Q. Okay. Were you ever asked to 10 10 US? 11 prepare a schedule in response to discovery 11 A. Not to my recollection. requests in this case? Q. Okay. Were you ever told in any 12 12 way that the amount of comp at the bottom, 13 13 A. No. you'll see at the bottom of 280B it totals to 14 14 Q. Okay. So this is something you had -- were you ever asked to alter these 15 1.999 billion. Could you see that? 15 schedules or modify them in any way with 16 16 A. Yes. 17 respect to providing discovery in this case? 17 Q. Were you ever told that that MR. GREEN: Object to the question 18 18 number should be 2 billion when all was said to the extent it invades communications 19 19 and done you should get down to 2 billion at 20 20 the end? between counsel and client. 21 21 Q. I'm not asking you any discussions A. No. 22 you may have had with attorneys in connection 22 Q. I'm not talking in connection with

23

24

25

with this schedule. But were you ever asked

to modify this schedule that you've been -- I

take it you've been maintaining this schedule

23

24 25 this litigation. I'm just asking in general.

Did anyone ever tell you that the total amount

of compensation should total about \$2 billion?

Page 74 Page 75 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 2 2 A. I was asked to prepare the Q. Okay. So let's look at 3 3 schedule in respect of detailing the discharge Exhibit 281B. I don't want to confuse the of our obligations to former Lehman Brothers 4 4 record here. 5 5 employees in respect of their prior service A. Okay. and compensation for their prior service for 6 6 Q. 281B is the most recent version of 7 7 Lehman Brothers. And this is what the this schedule, right? 8 8 schedule represents. It's items relating to A. That's correct. Q. Just so I understand what you just 9 9 pre-acquisition services. 10 Q. Okay. But were you ever told that said, when you see on the -- OBS Compensation 10 it should be a total of \$2 billion? Accrual, OBS stands for opening balance sheet; 1 11 12 12 is that right? A. No. 13 13 A. Yes. That's my understanding. Q. Do you have any understanding of how this schedule and the compensation listed 14 Q. Okay. And the source for the \$2 14 in this schedule relates to the 9/16 balance 15 billion number is the APA, correct? 15 16 sheet or the schedule we looked at previously? 6 A. Yes. 17 17 MR. GREEN: The Exhibit 19? Q. And by that you mean the source 18 for the \$2 billion is Exhibit 19 that we just 18 Q. Exhibit 19. 19 A. The only reference point between pointed to? 19 20 20 schedules 280B and 281B and the schedule you A. That's correct. have as Exhibit 19 is the OBS compensation 21 Q. Okay. So now how do you -- I just 21 want to walk through preparing this schedule. 22 accrual line which is reflected on both 280B 22 How do you get from the \$2 billion number --23 23 and 281B. The source referenced here is the how do you break it into 17 -- into 24 24 APA which references the \$2 billion described 25 1.7 billion in cash versus 300 million in 25 as comp on Exhibit 19. Page 77 Page 76 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 2 2 MR. GREEN: Oh, I'm sorry. equity? 3 A. I was requested by Mr. Romaine 3 A. It's a technical accounting matter in respect of how the -- my understanding is 4 to -- for accounting purposes to estimate the 4 5 stock component of any such compensation that 5 how the acquisition is accounted for in the 6 may total 2 billion with the assumption that 6 books and records of Barclays PLC. I don't 7 we applied -- oh, sorry. Let me say it again. know the technical aspects behind it. 8 Q. Okay. Just a general question. I was asked to estimate the stock 8 9 9 Has this allocation between cash and equity potential of any compensation that may be 10 10 represented by this 2 billion. changed at all since the fourth quarter of '08 .1 Q. Okay. 11 when you first started preparing the schedule 12 12 to the present? A. And the 300 million is an estimate A. Not to my recollection. Again, L 3 13 based on historic norms and experience under that would have to be something for Mr. the Barclays Capital stock deferral scheme. 14 L 5 15 Q. Is that the scheme we talked about Romaine. 6 earlier, the normal practice of Barclays? 16 Q. Okay. And again I'm happy if you 17 tell me it's someone else's department. I'm A. That is correct, yes. Okay. And when did he ask you to 18 not trying to get you to testify about things 8 19 19 you have no knowledge about. do this? 20 20 A. No, I understand. A. I believe it's a technical 21 21 accounting matter. And it's really a question Q. In the next -- could you just tell 22 for Mr. Romaine. 22 in the general structure here. You have 23 payments -- I see payments in future and other 23 MR. GREEN: I'm sorry. Did you 24 items. Payments are cash outflows or expenses 24 say when or why? 25 25 that have already taken place? MR. HINE: Why.

Page 79 Page 78 P. EXALL - HIGHLY CONFIDENTIAL P. EXALL - HIGHLY CONFIDENTIAL 1 1 2 2 MR. GREEN: Object to the form. 22/2. Is that just a typo? 3 3 Q. That's a bad question but --A. Yes, it is. A. My understanding is that these 4 4 Q. Okay. So back to 281B. What does 5 5 were amounts that had been either paid in cash this entry encompass? 6 6 or awarded in equity or paid as severance at A. There are two general components 7 7 the time that this spreadsheet had been to the \$12 million I believe you're referring 8 8 prepared. to. 9 9 Payable in the future I understand Q. Um-hum. 10 10 to be things that in most cases have not yet A. In general, the first is a series 11 been paid and were due and payable at a future 11 of payments made by Barclays on behalf of former Lehman Brothers employees that were 12 12 time through some sort of timing issue, et 13 13 cetera; whereas, other items were things that expatriates. So these are payments made to 14 were economic costs to Barclay PLC that were 14 tax authorities in other jurisdictions -- or 15 related to awards that had already been made. 15 it may have been the US jurisdiction but in 16 16 I guess you could actually the UK and other international jurisdictions 17 17 categorize the other items -- actually, the in respect of their pre-acquisition service. 18 way they're represented here the ISP awards 18 These were liabilities that 19 19 you could actually have recategorized that as effectively would have been for Lehman 20 20 payments. And payroll taxes, you could Brothers but Barclays took on those 21 21 categorize that as payable in the future. liabilities and funded them and made good on 22 22 Q. I see. When I -- again, just to those payments. 23 23 compare 280B and 281B I see in the first entry Q. These are payments to the 24 under Payment it says Pre -- on 281B it says 24 individuals or to regulatory authorities? 25 25 Pre 22/9 Payroll Items and in 280B is says A. To regulatory authorities on Page 80 Page 81 P. EXALL - HIGHLY CONFIDENTIAL 1 1 P. EXALL - HIGHLY CONFIDENTIAL 2 behalf of individuals. 2 on and around the date of the bankruptcy. 3 Q. Okay. Just so I understand it, 3 Those payables are not going to be made. They these are Lehman employees who were ex-pats at were liabilities for the former Lehman 4 4 5 the time of the acquisition who had some 5 Brothers. They were payables that were not 6 6 regulatory obligation to foreign authorities going to be paid. My understanding was there 7 7 or other authorities and Barclays paid that; was no cash to make them. As part of the 8 8 is that right? ordinary course of business to take on those 9 9 MR. GREEN: Objection to form. employees Barclays agreed to fund those 10 10 You can answer. payrolls in respect of those pre-acquisition 11 A. That is my understanding. 11 services. 12 O. Okay. And how much of this 12 12 Q. Okay. Just so I understand the 13 13 million is that? pool of people we're talking about, you're 14 A. I estimate it to be approximately 14 talking about payroll -- payroll amounts that 15 15 were due to the Lehman employees who came to \$7 million. 16 Q. And that money didn't go to the 16 **Barclays?** 17 17 individuals; it went to some regulatory A. Yes. 18 18 Q. You're not talking about -- this authority, correct? 19 19 A. That's my understanding. does not include payroll that was owed to 20 Q. Okay. And then what's the 20 Lehman employees who stayed with Lehman, 21 21 balance, the 7 from the 12? correct? 22 A. The balance of 5 -- as I said, 22 A. That's not my understanding. 23 there were two items. The balance of the 5 23 We have a double negative there. Q. 24 relates to payrolls that -- for former Lehman A. Yeah. There's a double negative. 24 25 Brothers employees that were due and payable It's my understanding those

Page 83 Page 82 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 2 amounts relate to payroll in respect to former 2 MR. GREEN: Right. 3 Lehman Brothers employees in respect of their 3 Q. Is that what I've seen referred to pre-acquisition services but these employees as base salary? 4 4 5 5 were employees that transferred or became A. Not only. I would suggest without 6 6 employees of Barclays Capital. reviewing the records in detail or Q. Okay. So it's only folks who 7 investigating in general, if you're talking 8 transferred to Barclays, correct? 8 payroll, you're talking any base salary paid 9 9 A. That is my understanding in most to the individual amongst other things that 10 10 are payroll related. cases. 1 11 Q. Like what? Q. Okay. When you say 12 12 pre-acquisition services, what do you mean? A. Benefits, pensions. Anything that Can I just use my colloquial term and you tell 13 may or may not -- or that may be part of an 13 me whether I'm right or wrong. Is this base 14 14 individual's monthly salary or related items. 15 15 salary that was owed to these folks as of Q. I understand. But it's not bonus. 16 L 6 September 22nd? It's not annual bonuses, right? 17 17 MR. GREEN: Object to the form of A. That's not my understanding, yes. 18 18 O. We've got a double negative. the question. Do you mean --19 Q. Well, let me back up. 19 A. My understanding is that that was 20 MR. GREEN: This specific 20 a payroll item and I do not believe that there 21 21 component of the first entry is what were any - as you term them - annual bonus 22 you're talking about? 22 payments incorporated in that. 23 23 MR. HINE: I'm talking about the Q. When you say a payroll item you're talking about the weekly or biweekly or 24 \$5 million out of the 12 million that 24 25 25 monthly checks that these folks were getting we've been talking about. Page 85 Page 84 1 1 P. EXALL - HIGHLY CONFIDENTIAL P. EXALL - HIGHLY CONFIDENTIAL 2 throughout the year. 2 of the question. 3 A. That's my understanding. 3 A. I don't know that for certain but 4 Q. Okay. And so is this 5 million 4 I believe that to be the case. 5 payments to those folks up to September 22nd 5 Q. Okay. But when I see the title it 6 6 or does it go beyond September 22nd? says Pre-September 22nd payroll items, my 7 A. I don't recall the exact dates. I question is does that 5 million continue these 8 8 payroll items all the way to the end of the don't know the exact dates to which the 9 9 payroll related. I do know that they were the year or is it just for the period in 10 **September? Do you understand my question?** payrolls that were due and payable at the time 10 A. They do not relate to any payments 11 that the acquisition was happening. The risk 11 12 12 for the rest of the year. was -- and this was the commercial risk --Q. Okay. So the 5 million is just to 13 13 that these employees that were going to come 14 to work for Barclays were not going to get 14 bring these employees up to September 22nd; is 15 15 paid for that month by Lehman Brothers. They that right? 16 would have had no monthly salary not being 16 A. I can't testify to whether the 17 employed by Barclays at that time. So this 17 22nd of September is the exact date but what I 18 was a make-good, I guess goodwill gesture by 18 can tell you is that is for their salary and 19 19 Barclays to fund the payroll to ensure the related items as per a payroll that was due 20 smooth transition into the new structure. 20 and payable at the time in and around the 21 21 acquisition. So whether that was the 23rd or Q. Okay. So presumably most of these 22 employees have been paid August 31st and this 22 the 25th of September I can't testify. I 23 23 is for the period of September for which they don't know the exact dates. 24 24 Q. Okay. But assuming the date of worked? 25 MR. GREEN: Objection to the form around September 22nd, this item, the \$5

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	Page 86	Page 87
1 P. EXALL - HIGHLY CONFID	ENTIAL 1	P. EXALL - HIGHLY CONFIDENTIAL
2 million, does not include payments for	o <mark>r</mark> 2	replacements for ex-Lehman employees granted
October, November and December for	or those 3	to them in 2008 prior to the acquisition.
4 employees; is that right?	4	So just explain to me what's going
5 A. That is right.	5	on here. This is Barclays replacing some RSUs
Q. Okay. The next item we see	is 6	that Lehman had previously granted to its
7 replacement RSUs. Could you tell us		employees?
8 is?	8	MR. GREEN: Object to form. You
9 A. RSU is an acronym to stand for	or 9	may answer.
restricted stock units.	10	A. There was a population of people
Q. Okay. And what are they?	11	that were given stock awards by Lehman
A. They are effectively in general	12	Brothers earlier in 2008. At the time of the
stock awards made to individuals that a	ire 13	acquisition the value of those awards had
restricted in the sense that they either d	o 14	declined to zero.
not vest immediately or can't be sold		Q. Right.
16 immediately.	<mark>16</mark>	A. For these specific employees it
Q. Okay. Now, these are a form	1 of 17	was decided that as a goodwill gesture,
compensation that Lehman had prev	iously used? 18	Barclays would give restricted stock awards in
A. Yes.	<mark>19</mark>	respect of that zero that original award
Q. Okay. Did Barclays previou	sly use 20	now valued at zero in effect to split the loss
21 these?		<u>50/50.</u>
A. Yes, we have.	<mark>22</mark>	So as a hypothetical example if
Q. Okay. Now, I see that you ci	te 23	the individual had been received an award
here \$11 million and I just want to re	e <mark>ad your</mark> 24	of stock to the value of \$100 from Lehman
source. It says new RSUs granted as	<mark>25</mark>	Brothers that had gone to zero at the time of
	Page 88	Page 89
1 P. EXALL - HIGHLY CONFI	DENTIAL 1	P. EXALL - HIGHLY CONFIDENTIAL
the bankruptcy, Barclays' goodwill		testify to what the vesting period because I
respect of that employee would have		don't know it for this particular award.
give them a stock award to the value		Q. Okay. Well, if it vested over
5 Barclays stock.	5	time, would it be entered on the balance sheet
6 Q. So it's in Barclays stock i	now.	for this year?
7 A. It's in Barclays stock but re		A. Sorry. Excuse me?
8 to the value of stock awarded prior		Q. If it had vested over time would
9 acquisition by Lehman Brothers.	9	it be entered on the acquisition balance sheet
Q. And that's based on the v	value of 10	for this year?
Barclays stock as of around Septe		MR. GREEN: Object to the form of
12 correct?	12	the question. You may answer if you
A. That's normal practice, yes		know.
Q. And does this vest over a		A. I believe that's a technical
15 of time?	15	accounting question. I believe the answer to
A. It would have, yes. I don't		be yes but I can't pass an exact accounting
the specific vesting for this particul		opinion. You should refer that to Mr.
but that would be the normal course		Romaine.
19 yes.	19	Q. Okay. And when you say this is a
Q. Would it be the three-year		goodwill gesture are you saying that Barclays
vest that you mentioned earlier?	21	wasn't obligated to do this under the APA?
A. It may or may not have been		MR. GREEN: Objection to the form
Often in many cases we will mire	or the 23	of the question. It calls for a legal
original vesting of an award at a pro- employer with a replacement award	evious 24	conclusion. A. I don't know what the APA

Page 90 Page 91 1 P. EXALL - HIGHLY CONFIDENTIAL P. EXALL - HIGHLY CONFIDENTIAL 1 2 2 specifically obligated Barclays or anyone else just a -- it's not paid in cash, right? 3 to do. I do know that this is a goodwill 3 A. My understanding it was stock 4 4 gesture for those employees. That's my awards. 5 5 understanding of that award. Q. Okay. You don't know why it's 6 6 Q. Okay. And are these very senior in --7 7 employees? A. No. 8 8 A. I believe they are -- there are --Okay. You have to answer either 9 I -- hum. I would categorize them as 9 yes or no. If you shake your head --0 10 employees -- I would suggest -- my A. Oh, sorry. I don't know why. recollection is actually that they're a range 11 Q. The next entry is Bonus Concluding 11 12 12 of employees. There were some senior Social Tax. Could you tell me what you mean 13 13 employees and some junior employees in that. by social tax? What is that? 4 I don't think that they were specifically 14 A. My interpretation of social tax targeted as the senior group. They were a 15 .5 would be -- my understanding would be these 6 group of people that had received awards at 16 are any ancillary taxes that would be due and 17 17 Lehman Brothers. payable to various regulatory authorities in 8. 18 respect of any annual bonus payment at any Q. Whoever happened to be in the pool 19 19 of people who received an award. point in time in whatever jurisdiction they 20 20 A. In the specific grouping, yes. have to be made in. Q. The next entry -- well, another 21 21 O. So is this like withholding tax? question on that. Why is that not in the 22 22 **Income tax?** 23 23 equity column, that 11 million? A. Not personal income tax, no. 24 A. I don't know. 24 Q. Oh. Just any --25 25 A. Let me characterize it again. Q. Do you think it should be or is it Page 92 Page 93 1 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 2 Where withholdings are required, yes, they 2 for total compensation review. The date 23 3 would be included in that number. It would 3 February 2009 relates to the date the data 4 were extracted from that system from which also include whatever benefits may or may not 4 5 5 be derived from any annual incentive payment this -- that element of the schedule was 6 that is made. So I believe one of those to be 6 prepared. 7 FICA in the US. 7 Q. Okay. So this is just a database 8 8 Q. Okay. So this would -- this where you track compensation payments to 9 9 figure of 1.529 billion includes all of that employees? 10 type of regulatory requirements, correct? 10 A. In effect, yes. 11 A. That's my understanding, yes. 11 Q. Oh, okay. And would that data 12 O. Okay. And when you say bonus 12 have changed since February of '09 up until 13 the date you prepared this? 13 here, these are annual bonuses? 14 MR. GREEN: Object to the form. 14 MR. GREEN: Object to the form. 15 15 O. Well, let me show you another A. I don't believe so. The 16 16 document. Maybe that helps me ask the compensation round had closed at that point. 17 17 Q. Okay. question better. 18 18 (Pause on the record.) A. Whilst there may be movements of 19 19 items subsequent to that, I think that data Q. While we're trying to find the 20 document, do you see in the source it says TCR 20 extract is accurate. 21 27 Feb 2009? 21 Q. When you say the compensation 22 22 MR. GREEN: 23rd Feb? round had been concluded, is there like an 23 23 Q. 23 Feb. annual schedule for the award of bonuses at 24 24 A. TCR is an acronym for our internal **Barclays?** 25 on-line compensation review system. It stands MR. GREEN: Object to the form.

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	Page 94		Page 95
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	A. Yes. There's a normal cycle that	2	to just take a minute to take a look at it.
3	is followed.	3	(Document review.)
4	Q. Okay. So are you saying that	4	MR. GREEN: Bill, while he's
5	they've been awarded by February 23rd and they	5	looking at I should say that as I'm sure
6	probably didn't change between then and now?	6	you know this entire deposition is
7	A. At the 23rd of Feb the cash	7	designated highly confidential.
8	amounts would have been distributed through	8	MR. HINE: Highly confidential.
9	the payroll. The equity awards, the value	9	MR. GREEN: And don't expect any
10	thereof would have been fixed.	10	redesignation because it's all about
11	Q. Okay.	11	comp.
12	A. The equity awards I don't believe	12	MR. HINE: I understand. I
13	had been formally made in terms of the amount	13	understand.
14	of stock units at that point. But the value	14	MR. GREEN: So it will remain that
15	of those awards had been fixed.	15	way.
16	Q. But you're relatively confident	16	MR. HINE: Well, I think our
17		17	agreement is we'll treat it as all
18		18	highly confidential and you guys let me
19		19	know if have you any re-designations.
20		20	MR. GREEN: Right.
21		21	MR. HINE: So that's fine.
22		22	MR. GREEN: Right.
23		23	BY MR. HINE:
24		24	Q. Mr. Exall, have you had a chance
25		25	to look at this document?
	jou le luminul with the terms but it jou want		to look at this document.
			- 05
	Page 96		Page 97
1	Page 96 P. EXALL - HIGHLY CONFIDENTIAL	1	Page 97 P. EXALL - HIGHLY CONFIDENTIAL
1 2	_	2	
	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	P. EXALL - HIGHLY CONFIDENTIAL A. Yes.	2	P. EXALL - HIGHLY CONFIDENTIAL Q. I see. Okay.
2	P. EXALL - HIGHLY CONFIDENTIAL A. Yes. Q. And my question is Mr. Lowitt is	2 3	P. EXALL - HIGHLY CONFIDENTIAL Q. I see. Okay. A. Any ancillary social taxes and
2 3 4	P. EXALL - HIGHLY CONFIDENTIAL A. Yes. Q. And my question is Mr. Lowitt is apparently awarded something entitled 2008	2 3 4	P. EXALL - HIGHLY CONFIDENTIAL Q. I see. Okay. A. Any ancillary social taxes and whatever that were due and payable to whatever
2 3 4 5	P. EXALL - HIGHLY CONFIDENTIAL A. Yes. Q. And my question is Mr. Lowitt is apparently awarded something entitled 2008 guaranteed cash bonus.	2 3 4 5	P. EXALL - HIGHLY CONFIDENTIAL Q. I see. Okay. A. Any ancillary social taxes and whatever that were due and payable to whatever authorities or any withholding tax in regard
2 3 4 5 6	P. EXALL - HIGHLY CONFIDENTIAL A. Yes. Q. And my question is Mr. Lowitt is apparently awarded something entitled 2008 guaranteed cash bonus. Do you see that?	2 3 4 5 6	P. EXALL - HIGHLY CONFIDENTIAL Q. I see. Okay. A. Any ancillary social taxes and whatever that were due and payable to whatever authorities or any withholding tax in regard with are included in those numbers as well.
2 3 4 5 6 7	P. EXALL - HIGHLY CONFIDENTIAL A. Yes. Q. And my question is Mr. Lowitt is apparently awarded something entitled 2008 guaranteed cash bonus. Do you see that? A. I do.	2 3 4 5 6 7	P. EXALL - HIGHLY CONFIDENTIAL Q. I see. Okay. A. Any ancillary social taxes and whatever that were due and payable to whatever authorities or any withholding tax in regard with are included in those numbers as well. Those obviously are not specified in the
2 3 4 5 6 7 8	P. EXALL - HIGHLY CONFIDENTIAL A. Yes. Q. And my question is Mr. Lowitt is apparently awarded something entitled 2008 guaranteed cash bonus. Do you see that? A. I do. Q. Do you understand that that bonus	2 3 4 5 6 7 8	P. EXALL - HIGHLY CONFIDENTIAL Q. I see. Okay. A. Any ancillary social taxes and whatever that were due and payable to whatever authorities or any withholding tax in regard with are included in those numbers as well. Those obviously are not specified in the contract as well.
2 3 4 5 6 7 8 9 10 11	P. EXALL - HIGHLY CONFIDENTIAL A. Yes. Q. And my question is Mr. Lowitt is apparently awarded something entitled 2008 guaranteed cash bonus. Do you see that? A. I do. Q. Do you understand that that bonus is part of the bonus including social tax entry that we just talked about on this	2 3 4 5 6 7 8 9	P. EXALL - HIGHLY CONFIDENTIAL Q. I see. Okay. A. Any ancillary social taxes and whatever that were due and payable to whatever authorities or any withholding tax in regard with are included in those numbers as well. Those obviously are not specified in the contract as well. Q. I understand that. But any
2 3 4 5 6 7 8 9	P. EXALL - HIGHLY CONFIDENTIAL A. Yes. Q. And my question is Mr. Lowitt is apparently awarded something entitled 2008 guaranteed cash bonus. Do you see that? A. I do. Q. Do you understand that that bonus is part of the bonus including social tax entry that we just talked about on this spreadsheet?	2 3 4 5 6 7 8 9	P. EXALL - HIGHLY CONFIDENTIAL Q. I see. Okay. A. Any ancillary social taxes and whatever that were due and payable to whatever authorities or any withholding tax in regard with are included in those numbers as well. Those obviously are not specified in the contract as well. Q. I understand that. But any regulatory requirements related to those two
2 3 4 5 6 7 8 9 10 11	P. EXALL - HIGHLY CONFIDENTIAL A. Yes. Q. And my question is Mr. Lowitt is apparently awarded something entitled 2008 guaranteed cash bonus. Do you see that? A. I do. Q. Do you understand that that bonus is part of the bonus including social tax entry that we just talked about on this spreadsheet? A. Yes.	2 3 4 5 6 7 8 9 10	P. EXALL - HIGHLY CONFIDENTIAL Q. I see. Okay. A. Any ancillary social taxes and whatever that were due and payable to whatever authorities or any withholding tax in regard with are included in those numbers as well. Those obviously are not specified in the contract as well. Q. I understand that. But any regulatory requirements related to those two entries on its contract would be included in
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	P. EXALL - HIGHLY CONFIDENTIAL A. Yes. Q. And my question is Mr. Lowitt is apparently awarded something entitled 2008 guaranteed cash bonus. Do you see that? A. I do. Q. Do you understand that that bonus is part of the bonus including social tax entry that we just talked about on this spreadsheet? A. Yes. Q. Okay. Is there anything else on	2 3 4 5 6 7 8 9 10 11 12 13	P. EXALL - HIGHLY CONFIDENTIAL Q. I see. Okay. A. Any ancillary social taxes and whatever that were due and payable to whatever authorities or any withholding tax in regard with are included in those numbers as well. Those obviously are not specified in the contract as well. Q. I understand that. But any regulatory requirements related to those two entries on its contract would be included in the numbers that you put in the spreadsheet, correct?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	P. EXALL - HIGHLY CONFIDENTIAL A. Yes. Q. And my question is Mr. Lowitt is apparently awarded something entitled 2008 guaranteed cash bonus. Do you see that? A. I do. Q. Do you understand that that bonus is part of the bonus including social tax entry that we just talked about on this spreadsheet? A. Yes. Q. Okay. Is there anything else on Mr. Lowitt's contract that would be part of that \$1.5 billion figure? A. If I take Mr. Lowitt as the example, the 4.56 million referred to in the contract as being 2008 guaranteed cash bonus would be part of the 1,271 number reflected as cash in that line.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	P. EXALL - HIGHLY CONFIDENTIAL Q. I see. Okay. A. Any ancillary social taxes and whatever that were due and payable to whatever authorities or any withholding tax in regard with are included in those numbers as well. Those obviously are not specified in the contract as well. Q. I understand that. But any regulatory requirements related to those two entries on its contract would be included in the numbers that you put in the spreadsheet, correct? A. That's correct. Q. Okay. And how about where you see he has a special cash award, is that in that entry on the spreadsheet? A. No, it is not. Q. Okay. Where would I find that
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	P. EXALL - HIGHLY CONFIDENTIAL A. Yes. Q. And my question is Mr. Lowitt is apparently awarded something entitled 2008 guaranteed cash bonus. Do you see that? A. I do. Q. Do you understand that that bonus is part of the bonus including social tax entry that we just talked about on this spreadsheet? A. Yes. Q. Okay. Is there anything else on Mr. Lowitt's contract that would be part of that \$1.5 billion figure? A. If I take Mr. Lowitt as the example, the 4.56 million referred to in the contract as being 2008 guaranteed cash bonus would be part of the 1,271 number reflected as cash in that line. Q. Okay. A. The EPP 2008 EPP recommendation to the value of \$1.44 million as reflected in	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	P. EXALL - HIGHLY CONFIDENTIAL Q. I see. Okay. A. Any ancillary social taxes and whatever that were due and payable to whatever authorities or any withholding tax in regard with are included in those numbers as well. Those obviously are not specified in the contract as well. Q. I understand that. But any regulatory requirements related to those two entries on its contract would be included in the numbers that you put in the spreadsheet, correct? A. That's correct. Q. Okay. And how about where you see he has a special cash award, is that in that entry on the spreadsheet? A. No, it is not. Q. Okay. Where would I find that entry on the spreadsheet? A. It is not on the spreadsheet. Q. Okay. So what is the special cash
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	P. EXALL - HIGHLY CONFIDENTIAL A. Yes. Q. And my question is Mr. Lowitt is apparently awarded something entitled 2008 guaranteed cash bonus. Do you see that? A. I do. Q. Do you understand that that bonus is part of the bonus including social tax entry that we just talked about on this spreadsheet? A. Yes. Q. Okay. Is there anything else on Mr. Lowitt's contract that would be part of that \$1.5 billion figure? A. If I take Mr. Lowitt as the example, the 4.56 million referred to in the contract as being 2008 guaranteed cash bonus would be part of the 1,271 number reflected as cash in that line. Q. Okay. A. The EPP 2008 EPP recommendation to the value of \$1.44 million as reflected in the contract, would be included in the \$258	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	P. EXALL - HIGHLY CONFIDENTIAL Q. I see. Okay. A. Any ancillary social taxes and whatever that were due and payable to whatever authorities or any withholding tax in regard with are included in those numbers as well. Those obviously are not specified in the contract as well. Q. I understand that. But any regulatory requirements related to those two entries on its contract would be included in the numbers that you put in the spreadsheet, correct? A. That's correct. Q. Okay. And how about where you see he has a special cash award, is that in that entry on the spreadsheet? A. No, it is not. Q. Okay. Where would I find that entry on the spreadsheet. Q. Okay. So what is the special cash award that I see several senior executives

1	T 9 02		Page 00
	Page 98		Page 99
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	the question.	2	they had done at Lehman it's not part of your
3	A. My understanding of these special	3	spreadsheet; is that right?
4	cash awards is that they are retention awards	4	A. Totally not related to the
5	subject to future service of the employee.	5	pre-acquisition service supplied by Lehman
6	They do not relate to pre-acquisition services	6	Brothers and consequently are not on the
7	performed for Lehman Brothers in relation to	7	schedule.
8	these individuals. Consequently, they're not	8	Q. Okay. So this schedule is only
9	on the schedule.	9	relating to pre-acquisition services that
10	Q. Okay. So just so I was	10	former Lehman employees performed for Lehman;
11	confused about that.	11	is that right?
12	So where I see special cash award	12	A. Yes. That's correct.
13	and various contracts that is to encourage the	13	Q. All right. Thank you for
14	individual to stay at Barclays for a period of	14	clarifying that.
15	time, correct?	15	While we're on Mr. Lowitt's
16	MR. GREEN: Object to the form.	16	contract, again we'll use it an example but do
17	You may answer.	17	you see the provision that says termination
18	A. That is my understanding of their	18	other than for cause?
19	retention award.	19	A. I see the provision.
20		20	*
\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	Q. When you say retention award	21	Q. And that lays out certain benefits
2122	that's an inducement for them to stay a period	22	that he's entitled to if he gets terminated
	of time; is that right?		without cause. Is that what I would call a
23	A. Yes. That's my understanding.	23	is that a severance payment?
24	Q. Okay. And then and because	24	MR. GREEN: Take your time to read
25	that was not meant to compensate them for work	25	the provision before you answer just to
	Page 100		Page 101
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	make sure your answer is addressed to	2	These were made in June of 2009.
3	the question.	3	That is a quirk I term it a quirk. It's
4	(Document review.)	4	market practice for Lehman Brothers graduate
5	A. Can you repeat the question?	5	program to pay their annual bonuses to the
6	Q. Well, why don't we do this. We're		
7	Q. Well, willy doll to we do this we let		
	going to get to some entries called severance	6	graduates at midyear. It's different to the
8	going to get to some entries called severance	6 7	graduates at midyear. It's different to the policy that we had at Barclays Capital. We
8	on your spreadsheet so we'll come back to that	6 7 8	graduates at midyear. It's different to the policy that we had at Barclays Capital. We stuck to this their policy in respect of
9	on your spreadsheet so we'll come back to that question.	6 7 8 9	graduates at midyear. It's different to the policy that we had at Barclays Capital. We stuck to this their policy in respect of the US graduates.
9 10	on your spreadsheet so we'll come back to that question. A. Yes.	6 7 8 9	graduates at midyear. It's different to the policy that we had at Barclays Capital. We stuck to this their policy in respect of the US graduates. Q. These are investment banking
9 10 11	on your spreadsheet so we'll come back to that question. A. Yes. Q. It has to do with severance so	6 7 8 9 10 11	graduates at midyear. It's different to the policy that we had at Barclays Capital. We stuck to this their policy in respect of the US graduates. Q. These are investment banking division employees who went to grad school and
9 10 11 12	on your spreadsheet so we'll come back to that question. A. Yes. Q. It has to do with severance so let's just postpone that question.	6 7 8 9 10 11 12	graduates at midyear. It's different to the policy that we had at Barclays Capital. We stuck to this their policy in respect of the US graduates. Q. These are investment banking division employees who went to grad school and is this a payment to the grad school for the
9 10 11 12 13	on your spreadsheet so we'll come back to that question. A. Yes. Q. It has to do with severance so let's just postpone that question. Let's go back to your spreadsheet.	6 7 8 9 10 11 12	graduates at midyear. It's different to the policy that we had at Barclays Capital. We stuck to this their policy in respect of the US graduates. Q. These are investment banking division employees who went to grad school and is this a payment to the grad school for the school?
9 10 11 12 13	on your spreadsheet so we'll come back to that question. A. Yes. Q. It has to do with severance so let's just postpone that question. Let's go back to your spreadsheet. The next entry I see is IBD Grad	6 7 8 9 10 11 12 13	graduates at midyear. It's different to the policy that we had at Barclays Capital. We stuck to this their policy in respect of the US graduates. Q. These are investment banking division employees who went to grad school and is this a payment to the grad school for the school? A. No, no, no. These are payments to
9 10 11 12 13 14	on your spreadsheet so we'll come back to that question. A. Yes. Q. It has to do with severance so let's just postpone that question. Let's go back to your spreadsheet. The next entry I see is IBD Grad Programs. Could you tell me what that is?	6 7 8 9 10 11 12 13 14	graduates at midyear. It's different to the policy that we had at Barclays Capital. We stuck to this their policy in respect of the US graduates. Q. These are investment banking division employees who went to grad school and is this a payment to the grad school for the school? A. No, no, no. These are payments to the individuals. The graduate program as
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1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	that is different to let's say non-graduate	2	practice at Lehman the cycle of their bonus
3	employees.	3	awards or payments were midyear. Whereas
4	Q. So this isn't a bonus. This is a	4	everyone else it's year end.
5	compensation this is an extra form of	5	Q. Okay. But they are still in grad
6	compensation to them because they went to	6	school still?
7	graduate school?	7	A. No, no. They have left grad
	0	1	
8	A. No. It's an extra form of	8	school. They're all graduates. But they're
9	compensation because they're on the graduate	9	part of our formal graduate program having
10	program and as part of that program they're	10	been recruited from grad school.
11	entitled to certain awards at certain points	11	Q. Okay. And how are they eventually
12	in time. June 2009 being the point in time at	12	transitioned from this program into becoming a
13	which they were entitled to them.	13	regular like, how do they transition to the
14	Q. Okay. I guess I'm just not	14	normal bonus cycle?
15	8	15	A. I can't speak for the exact Lehman
16		16	policy but in general my understanding of the
17	school and this is a payment they get as an	17	graduate program that we have is that they
18	extra incentive to come work for Lehman?	18	rotate for a certain period of time within the
19	MR. GREEN: Objection to form.	19	business in which they work. They learn their
20	You may answer.	20	business. They, you know, work, they learn,
21	A. This is for all intents and	21	et cetera. And as and when they the
22	purposes in general their annual bonus, okay?	22	graduate program is generally a finite amount
23	Their timing is different than the general	23	of time. In Barclays Capital traditionally it
24	population for whatever reason. That's	24	was 18 months. The graduates did a bunch of
25	standard practice at it was standard	25	rotations in various business areas and they
	Page 104		Page 105
	Page 104		Page 105
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	P. EXALL - HIGHLY CONFIDENTIAL were either employed or not employed at the	2	P. EXALL - HIGHLY CONFIDENTIAL Okay. So they have a base salary
2	P. EXALL - HIGHLY CONFIDENTIAL were either employed or not employed at the end of that cycle by Barclays Capital.	2 3	P. EXALL - HIGHLY CONFIDENTIAL Q. Okay. So they have a base salary and then an additional amount paid in or
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1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	costs would have been borne by Lehman Brothers	2	difference in treatment between a graduate and
3	and post acquisition would have been borne by	3	a non-graduate. As I mentioned before,
4	Barclays Capital in the normal course of	4	graduate compensation is quite highly specific
5	business. And those payments would not be	5	and regulated within specified bands and it's
6	reflected in the schedule.	6	run in a different way to compensation for
7	Q. Okay. So this \$11 million for IBD	7	non-graduates. Consequently, these amounts
8	graduates is only does not include the base	8	would have been June payable almost
9	salary component of their compensation.	9	irrespective of the performance of the
10	A. That's correct.	10	graduate.
11	Q. Okay. It only includes the	11	So by the fact that we employed
12	portion of their compensation that they	12	them as part of the acquisition those would
13	receive every June. Or thereabouts.	13	have been paid in any event. It's simply a
14	A. It reflects what was paid to them	14	timing issue.
15	in June 2009.	15	Q. Well, does it mean that some of
16	Q. Okay. And	16	that 11 million relates to work that they did
17	A. In respect of their	17	after September?
18	pre-acquisition service for Lehman Brothers.	18	A. I don't believe so to be the case.
19	Q. So it's paid to them in June of	19	Q. You don't think so?
20	2009 but it relates to their work up until	20	A. No.
21	September of 2008?	21	Q. Why not?
22	A. Yes.	22	A. Because I believe as I mentioned
23	Q. And how about their work from	23	before that those amounts would have been June
24	September onward?	24	payable to these graduates in any event.
25	A. This again comes back to the	25	Irrespective of their service. These are
	Page 108		Page 109
1		1	
1 2	P. EXALL - HIGHLY CONFIDENTIAL	1 2	P. EXALL - HIGHLY CONFIDENTIAL
2	P. EXALL - HIGHLY CONFIDENTIAL as I said, their compensation is treated	2	P. EXALL - HIGHLY CONFIDENTIAL September 22nd?
2 3	P. EXALL - HIGHLY CONFIDENTIAL as I said, their compensation is treated somewhat differently to compensation among	1	P. EXALL - HIGHLY CONFIDENTIAL September 22nd? A. That is my understanding, yes.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	P. EXALL - HIGHLY CONFIDENTIAL as I said, their compensation is treated somewhat differently to compensation among non-graduates. Q. Okay. And are they informed that this is their annual bonus? MR. GREEN: Object to the form of the question. A. I haven't seen what was given to them as part of their graduate program. Q. Okay. If we go back to the bonus in the previous entry, the \$1.529 billion, does any of that encompass work that were performed by former Lehman employees since they've come to Barclays? In other words, after September 22nd? MR. GREEN: Object to the form. Asked and answered. A. This schedule represents compensation paid to former Lehman Brothers employees in respect to their pre-acquisition services for Lehman Brothers. Q. So am I correct to say that \$1.529	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	P. EXALL - HIGHLY CONFIDENTIAL September 22nd? A. That is my understanding, yes. Q. And so in certain employment contracts if I see anything relating to a 2009 bonus recommendation you're saying that would not be in this \$1.259 billion number? A. No, it wouldn't. It would not be in that number. Q. Okay. A. Well, could you show me an example if you want to be specific? Q. I'm not sure I have one but I A. I mean, if I refer back to Mr. Lowitt's contract it talks about a 2008 guaranteed cash bonus and a 2008 EPP recommendation. Q. Right. A. Those amounts are included on the spreadsheet. Had there been two additional clauses referring to 2009 cash and stock, those would not have been on the schedule. Q. Okay. That was my question.

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	Page 110		Page 111
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	compensation he has a base salary of 200,000.	2	ancillary payments to individuals.
3	Do you see that?	3	Withholding taxes and ancillary liabilities in
4	A. Yep. I do.	4	respect of the reduction in force exercise
5	Q. Is that on your spreadsheet at all	5	implemented in Q4 2008 and Q1 2009 in respect
6	within any entries?	6	of former Lehman Brothers employees.
7	A. No.	7	Q. Okay. When I see RIF in the
8	Q. And why is that?	8	source that's reduction in force?
9	A. Because that salary would have	9	A. That acronym stands for reduction
10	been paid to him post-acquisition. The	10	in force, yes.
11	schedule does not reflect any post-acquisition	11	Q. And what does that VIG stand for?
12	obligations.	12	A. I don't know what VIG actually
13	Q. I understand. So that is	13	stands for. It is meant to refer to the Q1
14	compensation he's receiving for work he's	14	2009 reduction in force exercise.
1			
15 16	performing for Barclay post-acquisition. That would be correct. The only	15	Q. So RIF refers to the fourth
\	A. That would be correct. The only	16	quarter '08 reduction in force?
17	way that that some of that 200,000 would	17	And the good depression reference
18	have been part of this schedule is if it was	18	Q. And the second acronym refers to
19	part of the pre-2009 payroll we discussed	19	the first quarter of '09 reduction?
20	previously.	20	A. That's my understanding.
21	Q. I understand. Okay.	21	Q. Okay. And you got lists of
22	The next entry you'll see is	22	what do your lists show from HR? I see a
23	entitled Severance. Could you tell me what	23	reference from HR.
24	that is meant to cover?	24	A. We maintained we, HR,
25	A. That relates to payments and	25	maintained databases of payments made to
	Page 112		Page 113
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	individuals and related items on a	2	Q. And how was their severance
3	name-by-name-basis reflecting these items	3	calculated?
4	totalling these amounts on the schedule.	4	A. The standard severance policy of
5	Q. Okay. Now, these individuals came	5	Lehman Brothers was applied in respect to
6	to work for Barclays at or around September	6	in most cases in respect of former Lehman
7	22nd and had left since then?	7	
8			Brothers employees and the application of that
	A. These are former Lehman Brothers		Brothers employees and the application of that policy resulted in severance payments being
9	A. These are former Lehman Brothers employees that came and worked for Barclays	8	policy resulted in severance payments being
9	employees that came and worked for Barclays	8 9	policy resulted in severance payments being calculated and awarded to individuals
10	employees that came and worked for Barclays and then were part of the reduction in force	8 9 10	policy resulted in severance payments being calculated and awarded to individuals concerned.
10 11	employees that came and worked for Barclays and then were part of the reduction in force exercises, yes.	8 9 10 11	policy resulted in severance payments being calculated and awarded to individuals concerned. Q. Okay. Now, this is these
10 11 12	employees that came and worked for Barclays and then were part of the reduction in force exercises, yes. Q. Okay. So they're not that list	8 9 10 11 12	policy resulted in severance payments being calculated and awarded to individuals concerned. Q. Okay. Now, this is these severance payments are separate from the bonus
10 11 12 13	employees that came and worked for Barclays and then were part of the reduction in force exercises, yes. Q. Okay. So they're not that list does not include people who ever came to	8 9 10 11 12 13	policy resulted in severance payments being calculated and awarded to individuals concerned. Q. Okay. Now, this is these severance payments are separate from the bonus payments we talked about earlier.
10 11 12 13 14	employees that came and worked for Barclays and then were part of the reduction in force exercises, yes. Q. Okay. So they're not that list does not include people who ever came to Barclays at all.	8 9 10 11 12 13	policy resulted in severance payments being calculated and awarded to individuals concerned. Q. Okay. Now, this is these severance payments are separate from the bonus payments we talked about earlier. A. Yes, they are.
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10 11 12 13 14 15 16 17 18 19 20 21 22 23	employees that came and worked for Barclays and then were part of the reduction in force exercises, yes. Q. Okay. So they're not that list does not include people who ever came to Barclays at all. A. That's not my I believe that to be the case, yes. Q. Okay. So if they received severance it was from Lehman, not Barclays, correct? MR. GREEN: Object to the form of the question. You can answer if you know. A. I don't know.	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	policy resulted in severance payments being calculated and awarded to individuals concerned. Q. Okay. Now, this is these severance payments are separate from the bonus payments we talked about earlier. A. Yes, they are. Q. Okay. So these are is it correct all of these payments have been made to people who no longer work for Barclays, correct? A. Yes. Q. Now, why in the entry do we have some severance and it looks like it's payable in the future? Do you see the entry I'm talking about? The \$27 million?
10 11 12 13 14 15 16 17 18 19 20 21	employees that came and worked for Barclays and then were part of the reduction in force exercises, yes. Q. Okay. So they're not that list does not include people who ever came to Barclays at all. A. That's not my I believe that to be the case, yes. Q. Okay. So if they received severance it was from Lehman, not Barclays, correct? MR. GREEN: Object to the form of the question. You can answer if you know.	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	policy resulted in severance payments being calculated and awarded to individuals concerned. Q. Okay. Now, this is these severance payments are separate from the bonus payments we talked about earlier. A. Yes, they are. Q. Okay. So these are is it correct all of these payments have been made to people who no longer work for Barclays, correct? A. Yes. Q. Now, why in the entry do we have some severance and it looks like it's payable in the future? Do you see the entry I'm

Page 114 Page 115 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 2 2 A. These are meant to cover exactly Q. So am I correct to say that that 3 3 the same thing in that they are severance 27 million entails either a reconciliation related to former Lehman Brothers employees 4 4 issue that you just mentioned or something 5 5 that are part of the reduction in force that's been promised to someone after they 6 6 left but that's payable in the future. exercise. But these are amounts that had not 7 at the time of the production of the schedule A. That's my understanding, yes. 8 8 Q. Okay. So if I wanted to know the either been paid or had been reconciled fully 9 9 total amount of severance paid to former to the extent that they had -- we can trace 10 10 Lehman employees or to be paid to former the item to a payroll. 11 Q. Can you explain that last part to 11 Lehman employees I would add up the 238 and 12 12 the 27 million, correct? me. 13 13 A. Yes. And that would cover not A. For the most part these amounts 14 14 have been paid. Have actually been discharged only the payment made to individuals and the 15 15 and the cash has left the account. The 27 withholding associated with those but also an 16 million reflect payments that have not as yet 16 estimate for ancillary benefits and amounts 17 17 been made. All are still in the process of that may be payable on those amounts to 18 being reconciled. 18 various regulatory bodies. 19 19 **Q.** Meaning negotiating with the Q. So do you have any understanding 20 20 whether these severance entries related in any individuals leaving? 21 21 A. No. Reconciling between what way to the clause 9.1(c) of the APA that we 22 people originally estimated their -- an 22 discussed earlier which talked about bonuses? individual severance to be and what they were 23 23 MR. GREEN: Object to the form to 24 eventually paid on the payroll. There may be 24 the extent it calls for a legal 25 25 differences between those two points. conclusion. Page 116 Page 117 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 A. I don't have a specific -- I don't 2 Q. So is it correct to say 25 percent 2 3 have specific knowledge as to how the two are 3 of the 27 million is that type of benefit? 4 tied together or not as the case may be. I'm 4 A. I don't know if that's the exact 5 5 not qualified to interpret that. What I can calculation. I haven't got an answer for 6 6 say is that again these are severance related that. 7 to former Lehman Brothers employees related to Q. Okay. If you refer back to 8 their service with Lehman pre-acquisition. 8 Exhibit 19 are these severance payments part 9 9 Q. Okay. In the Future Severance of the \$2 billion in comp that you see listed 10 10 entry in your note you talk about the RIF and there or do you have any understanding about 11 VIG list from HR and then you write, "And 11 that? 12 12 includes 25 percent for benefits for RIF." MR. GREEN: Object. Calls for a What does that refer to? 13 13 legal conclusion. 14 A. We have made an estimate in these 14 A. I don't know what that represents. 15 15 So I can't say whether those services are amounts in this 27 million in respect of, as I 16 16 mentioned earlier, payments that may be due included or not. 17 and payable to regulatory bodies in respect of 17 Q. When you said that you were 18 benefits or people that are on salary 18 pointing to the \$2 billion on figure 19? 19 continuation. So these are people that don't 19 A. Described as comp, yes. 20 get their severance upfront, they take it over 20 Oh, okay. When I looked at the 21 21 a period of time, and they're still covered by prior version, 280B, it says Severance 2 as 22 benefits. So those are payments, estimates in 22 the title. Or is that just a typo? 23 23 respect of the benefit amounts that they're A. Typo. Q. Okay. And now you might have still covered for during the period of their 24 24 25 covered this already but how did the severance severance.

Page 118 Page 119 1 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 2 figures change from the time you prepared the 2 MR. GREEN: Forty-nine. 3 first version of this -- or version marked as 3 A. \$49 million. Okay. 280B versus the most recent version? 4 4 The reason for the movement --5 I mean, I see they've gone down in 5 there are two reasons in general. One was a 6 6 terms of the payment severance version but pure error on the spreadsheet. There were 7 they've gone up -- oh, no. I guess they've 7 amounts paid -- there were amounts of 8 gone down in both instances. 8 severance that were paid to individuals that 9 9 MR. GREEN: Object to the form. were included both in the bonus including 10 A. Could you just restate that 10 social tax line and in the severance line. That related to approximately \$28 million that 11 11 question? 12 if I refer back to 280B that \$28 million was 12 Q. If I compare the two severance 13 13 entries on Exhibit 280B with 281B it's fair to reflected in the 261 and was reflected in the 14 say the severance numbers have reduced, 14 1.529. 15 correct? .5 Q. So you're just removing the double 16 16 A. That is correct. counting. 17 17 Q. And my question is why. A. We removed the double count and 18 A. If you aggregate them I believe 18 moved it to the second schedule which we 19 19 the Schedule 280B, the amounts of severance discovered for the reconciliation award. 20 total \$314 million. On Schedule 281B they 20 Q. Okay. 21 total \$265 million. That's approximately a 21 A. The other reduction of the 22 22 \$40 million difference. additional, what? -- \$21 million relates to a 23 23 Is that right? full -- a more full reconciliation of the 24 \$50 million difference. Excuse 24 severances yet to be paid. As I mentioned 25 25 earlier, we were in the process of reconciling me. Page 120 Page 121 1 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 2 2 what original severances were estimated to be O. Both. 3 for individuals versus what was actually 3 A. On policy I think you could direct both sets of questions through to Mr. Kerman. 4 processed and paid ultimately to those 4 5 5 individuals. Q. Okay. 6 6 A. Although he's not responsible for And in the cross-comparisons of 7 the original database to the payroll we 7 payroll. You know, he may or may not pass 8 discovered that people had been estimated to 8 that question on. 9 receive severances substantially in excess to 9 Q. But when you get the lists from 10 what they actually received. So the 10 HR, is he the person preparing those lists? 1 difference between A and B is a reduction as 11 A. No. It would be -- it's prepared 12 12 by, you know, people within HR function. you see reflected on the schedule. 13 2 Q. Okay. Is any of the difference Q. Okay. 14 between these two schedules -- the severance 14 A. He doesn't prepare them, no. 5 15 O. Well, does he supervise those who entries on these two schedules the result of 16 16 any kind of change in policy at Barclays as to prepare them? 7 17 A. He's the head of employee severance payments? 18 8 A. Not at all. relations. I don't know whether he 19 Q. Okay. And who would I ask if I 19 particularly supervised the preparation of 20 really wanted specifics on that question? 20 these databases. He knows of their existence. 21 21 Q. But am I correct -- I mean, as That would be --22 MR. GREEN: On which question? 22 you've described it, it seems to be -- the 23 Q. On just severance payments. 23 difference in the two schedules appears to me 24 A. On policy or specific severance 24 to be just reconciling accounting errors or 25 payments? reconciliation type errors; is that right?

Page 122 Page 123 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 2 MR. GREEN: Object to form. 2 A. I would be speculating. It sounds 3 A. The errors -- well, the two items 3 plausible but I can't answer directly. I represent a double count of particular 4 4 don't have the previous schedules in front of 5 5 individuals. me. 6 6 Q. Right. Q. Okay. Well, my question is how do 7 A. Which were clear errors in the you know that these severance payments are 8 8 production of the original spreadsheet. As made in respect of work they did at Lehman 9 well as a further reconciliation as to 9 when they've been working for Barclays for six 10 10 or eight months now? Where's the cutoff? estimated severance amounts versus actual 11 payments to former Lehman Brothers employees. MR. GREEN: Object to the form. 11 12 The reconciliation effort is a -- you know, 12 A. In general, severance payments are 13 13 was -- is a joint effort between HR and based on previous service at an employer. The 14 L 4 finance professionals. vast majority of any individual receiving a 15 15 Q. Okay. Now, if we looked at your severance, the vast majority of their previous 16 spreadsheets over time which you said you 16 service would have been in respect of Lehman 17 started preparing them in the fourth quarter 17 Brothers, services rendered to Lehman 18 of '08, is it fair to assume that the 18 Brothers. 19 19 severance numbers would have increased over Q. So in preparing this schedule 20 20 time? which is only supposed to reflect service or 21 21 MR. GREEN: Object to the form. costs associated with their service at Lehman, 22 22 A. I don't recall. you're assuming that the entire amount of 23 Q. I mean, the more people leave, the severance paid to these individuals is in 24 more gets paid out in severance and these 24 respect of their service at Lehman; is that 25 25 numbers increase, correct? right? Page 124 Page 125 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 A. That is what I am assuming on the 2 2 is? 3 schedule, correct. 3 A. Those would be amounts due and 4 Q. And theoretically at some point 4 payable to relevant tax authorities once the 5 5 any severance payment they received should equity awards reflected on the schedule are 6 6 also include a component that relates to their vested and become vested by the employees. 7 7 work at Barclays, right? Q. So is this the three-year cliff 8 8 MR. GREEN: Object to the form. vest you talked about? 9 9 A. Just repeat that question, please. A. Yes. Q. So three years from now there will 0 Q. Well, theoretically over time if 10 be some kind of obligation to regulatory .1 these folks worked for Barclays for a period 11 authorities based on individuals' receipt of 12 12 of time, a portion of their severance has to 13 13 be allocated to the work they did at Barclays their stock bonus? as opposed to Lehman, right? 14 A. That's my understanding. Q. And the 1.79 percent what is that L 5 A. That would be correct. 15 16 Q. Okay. But you haven't made that 16 based on? 17 17 allocation in preparing this spreadsheet? A. That's an estimate made by finance 18 18 A. I don't believe so. I can't based -- you'd have to ask them. My answer for my -- I believe that these 19 19 understanding is it's based on a blended rate 20 represent amounts paid to individuals for 20 of tax which is standard practice across 21 21 their pre-acquisition service. Barclays Capital. Q. Okay. The next entry talks about 22 22 Q. Okay. And then what is that --23 the payroll tax on equity compensation. 23 1.9 percent of what? 24 MR. GREEN: 1.79 percent you mean? 24 A. Yes. 25 25 Could you explain to me what that Q. I'm sorry. 1.79 percent of what?

Page 126 Page 127 P. EXALL - HIGHLY CONFIDENTIAL P. EXALL - HIGHLY CONFIDENTIAL 1 1 2 2 A. It relates to the \$258 million A. The reflects the fact that between 3 3 of -- in the equity column of bonuses the date of award of these stock -- these amounts of stock and the date at which these 4 including social taxes. I should point out 4 5 5 here if you do a calculation of 1.79 on the schedules were prepared, the stock price of 6 6 Barclays underpinning the value of these 258 you don't get 9. awards had roughly doubled. Q. Right. That's my question. 7 8 8 Q. From when to when? From A. The difference is the growth in 9 the Barclays stock price subsequent to the 9 September --10 award being made. The tax will be payable, 10 A. These stock awards were made in 1 due and payable, based on the ultimate value 11 May 2009. And the schedule is done as you see 12 of those awards when the vest. So that 9 12 it with all these -- it is an estimate of a 13 13 could increase over time. liability that is due and payable at some 14 4 Q. Well, so this 1.79 assumes a future time. That liability may or may not be 15 15 growth in the value of the stock that's \$9 million. It could be different. 16 16 Q. Okay. But at present you're vesting over that three-year period, right? 17 17 A. The 1.79 is the blended -- my estimating it at 9 million. 18 understanding is that the 1.79 is the blended 18 A. That's correct. 19 19 Q. And that's assuming or it's based rate applied to the equity award respect of 20 20 tax. on an increase in the value of the Barclays 21 21 Q. Right. stock which is the item that you multiple by A. You will notice that's being 22 22 1.79. 23 23 increased by a multiple of 2 on the A. My calculation would be the \$258 million multiplied by 1.79 percent times 2, 24 spreadsheet. 24 25 25 Q. Right. the 2 factor representing the growth of the Page 128 Page 129 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 2 Barclay stock price. 2 to be awarded over two years? 3 Q. Okay. And now this \$9 million 3 A. I do. Q. Is that this 50 -- part of this 4 doesn't get paid to former Lehman employees, 4 5 5 right? It gets paid to regulatory authorities \$53 million you're talking about? 6 6 around the globe? A. No. 7 7 A. Yes. Q. Okay. So I don't see any other 8 Q. The next entry talks about 8 entries here that could be that. You're 9 9 acquisition buyout vesting over two years. saying that he's not one of the recipients of 10 10 Do you see that? the \$53 million that you're talking about 11 11 A. I do. here? 12 12 Q. \$53 million. What is that meant A. No, he is not. 13 13 to encompass? Q. Okay. And who is getting that 14 A. As described here, it's a bonus 14 money? 15 15 relating to pre-acquisition performance by an MR. GREEN: You can go ahead and individual or individuals that worked for 16 16 17 Lehman Brothers and now work for Barclays. 17 A. A gentleman by the name of Mr. 18 18 Jonathan Hoffman. These are commitments that we assumed and 19 19 embodied in contracts in respect of this Q. And who is he? 20 individual or individuals to deliver this 20 A. He is a principal trader in the 21 21 \$53 million over the next two years. global markets business at Barclays Capital. 22 22 Okay. Now, let's turn back to Mr. Q. And why is he getting this money? A. The amount was owed -- was due and 23 23 Lowitt's contract. 24 24 payable to him by Lehman Brothers under his A. Yeah. 25 Do you see the special cash award contract with Lehman Brothers pre-acquisition.

Page 130 Page 131 1 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 2 2 Barclays assumed that liability as part of the A. He was owed -- under his contract 3 acquisition process and embodied these amounts 3 with Lehman Brothers, that was the amount due 4 of that compensation amongst others in that 4 and payable to him -- well, that is not the 5 5 contract and those amounts are due and payable entire amount. But that is the amount 6 6 to him over time as specified in that included on this spreadsheet. Well, the 7 contract. entire amount is included on this spreadsheet. 8 There's another element sitting in bonus 8 Q. Okay. Now, this is all -- the 9 entire 53 million goes to this one individual? 9 including social taxes. The 53 million 10 10 A. That is correct. represents the amount outside of the bonus 1 11 including social taxes amount and is in O. Over a three-year period? 12 A. He receives two tranches of \$20 12 respect -- the entire amount is in respect of 13 the contract that he had at Lehman Brothers 13 million in February '10 and February '11. And 14 the additional 13 will effectively be 14 which guaranteed him a payout on his trading 15 delivered in February of 2010. 15 performance. And the amount relates to the 16 O. Okav. When I -- just for 16 trading performance he did, for want of a 17 17 clarification when it says February '10 that better word, pre-acquisition. 18 means February 2010? 18 Q. Okay. So this is a con -- he had 19 19 a contract with Lehman that provided him X A. That's correct. 20 20 amount of compensation based on his trading Q. **And February '11 means February** 21 21 performance and this number is the amount due 2011? 22 22 A. and payable to him up to September 22nd, 2008 That is correct. 23 23 Q. And maybe you explained this but under that contract? is this -- what is this to reflect as far as 24 24 MR. GREEN: Object to the form of 25 25 his performance at Lehman? the question. Page 132 Page 133 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 A. That's correct. 2 O. So Barclays undertook that 2 3 MR. GREEN: Well, could we go off 3 obligation to pay him what he was owed by the record for one second? Because I 4 4 Lehman. 5 5 think the record is unclear. Or I can A. That is correct. 6 O. Okay. But in your note here it 6 add a clarification. 7 7 MR. HINE: You want to add a says bonus relating to performance for one 8 8 clarification? January to 22 September '08. 9 9 Do you see that? MR. GREEN: But I don't want to 10 10 A. I do. testify. 11 MR. HINE: No, no. You can take a 11 Q. Then it says but with future time 12 12 served criteria and a portion linked to future break. 13 13 production. MR. GREEN: Take a short break. 14 14 What does that mean? (Recess taken.) 15 A. I can't -- I'll give you my 15 MR. HINE: Let's go back on the 16 16 general interpretation of the terms. The A. A clarification of the previous 17 17 specific legal interpretation of the question perhaps is relevant. The amounts -forfeiture clauses I can't really speak to all 18 18 19 the amounts payable to Mr. Hoffman were 19 that. 20 amounts that were due and payable to him under 20 O. Sure. 21 the contract with Lehman Brothers. And the 21 A. The intention was to deliver two 22 clarification is they had not as yet at that 22 payments or two tranches of \$20 million in 23 23 time been paid to him at all. They were just each of February 2010 and February 2011. due and payable to him. He hadn't received 24 Those payments could be reduced -- each 24 25 payment could be reduced by up to 10 million any of that compensation.

	Page 134		Page 135
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	should Mr. Hoffman had made losses in his	2	O. Sure. Sure.
3	trading for Barclays Capital post-acquisition.	3	A. I'm giving you a general
4	So for all intents and purposes we	4	intention, and my interpretation personal and
5	promised Mr. Hoffman to pay him \$20 million.	5	it may or may not somebody may or may not
6	10 million of that 20 of each of the 20	6	agree with that or not. Ten of the 20 of
7	could be re that 20 million could be	7	each 20 was subject to forfeiture depending on
8	reduced by up to 10 million should he have	8	the extent of Mr. Hoffman's loss trading
9	made losses for Barclays Capital in the	9	loss for Barclay in each of those years. And
10	performance period subsequent to the	10	the \$13 million is also subject to him having
11	acquisition.		made money for Barclays subsequent to his
12	Q. So part of the 53 is based on his	12	Q. So am I correct to say that the 53
13		13	million is based on his pre-acquisition
14	MR. GREEN: Object to the form.	14	performance at Lehman but Barclays'
15	A. No. The entire fee is based on	15	-
16		16	willingness to assume that liability is in
17		17	part based on how well he performs at
18	his trading performance at Barclays.	18	Barclays? MR. GREEN: Object to the extent
19	Q. All right. So am I correct to	19	it calls for a legal conclusion.
20	say and how much is at issue with respect	20	A. Barclays assumed the entire
21		21	liability and has structured some terms and
22	to his performance at Barclays? I thought you said 10 million	22	
23	A. 10 million of each of the 20	23	conditions around the delivery of that
24		24	liability.
25	again, you would need a lawyer to interpret the contract.	25	Q. Well, but that's a modification to the agreement he had at Lehman, right?
2.3	the contract.	2.5	the agreement he had at Lemman, right:
	D 126		5 130
	Page 136		Page 137
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct	2	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman?
2	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual	2 3	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is.
2 3 4	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone.	2 3 4	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there
2 3 4 5	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone. Q. Okay. But Barclays assumes a	2 3 4 5	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there anything else in this entry of 53 million
2 3 4 5 6	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone. Q. Okay. But Barclays assumes a \$53 million obligation based on his work prior	2 3 4 5 6	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there anything else in this entry of 53 million other than the Mr. Hoffman deal?
2 3 4 5 6 7	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone. Q. Okay. But Barclays assumes a \$53 million obligation based on his work prior to the acquisition, right?	2 3 4 5 6 7	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there anything else in this entry of 53 million other than the Mr. Hoffman deal? A. Nope.
2 3 4 5 6 7 8	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone. Q. Okay. But Barclays assumes a \$53 million obligation based on his work prior to the acquisition, right? A. That's correct.	2 3 4 5 6 7 8	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there anything else in this entry of 53 million other than the Mr. Hoffman deal? A. Nope. Q. Okay. I had a follow-up question
2 3 4 5 6 7 8 9	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone. Q. Okay. But Barclays assumes a \$53 million obligation based on his work prior to the acquisition, right? A. That's correct. Q. But Barclays' willingness to pay	2 3 4 5 6 7 8 9	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there anything else in this entry of 53 million other than the Mr. Hoffman deal? A. Nope. Q. Okay. I had a follow-up question on the you had previously talked about the
2 3 4 5 6 7 8 9	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone. Q. Okay. But Barclays assumes a \$53 million obligation based on his work prior to the acquisition, right? A. That's correct. Q. But Barclays' willingness to pay that is contingent on at least in substantial	2 3 4 5 6 7 8 9	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there anything else in this entry of 53 million other than the Mr. Hoffman deal? A. Nope. Q. Okay. I had a follow-up question on the you had previously talked about the social tax and the payroll tax in certain of
2 3 4 5 6 7 8 9 10 11	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone. Q. Okay. But Barclays assumes a \$53 million obligation based on his work prior to the acquisition, right? A. That's correct. Q. But Barclays' willingness to pay that is contingent on at least in substantial part on how well he performs for Barclays	2 3 4 5 6 7 8 9 10	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there anything else in this entry of 53 million other than the Mr. Hoffman deal? A. Nope. Q. Okay. I had a follow-up question on the you had previously talked about the social tax and the payroll tax in certain of these entries. Do you remember that?
2 3 4 5 6 7 8 9 10 11 12	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone. Q. Okay. But Barclays assumes a \$53 million obligation based on his work prior to the acquisition, right? A. That's correct. Q. But Barclays' willingness to pay that is contingent on at least in substantial part on how well he performs for Barclays thereafter, correct?	2 3 4 5 6 7 8 9 10 11 12	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there anything else in this entry of 53 million other than the Mr. Hoffman deal? A. Nope. Q. Okay. I had a follow-up question on the you had previously talked about the social tax and the payroll tax in certain of these entries. Do you remember that? A. Yes.
2 3 4 5 6 7 8 9 10 11 12 13	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone. Q. Okay. But Barclays assumes a \$53 million obligation based on his work prior to the acquisition, right? A. That's correct. Q. But Barclays' willingness to pay that is contingent on at least in substantial part on how well he performs for Barclays thereafter, correct? A. That is correct. As well as Mr.	2 3 4 5 6 7 8 9 10 11 12 13	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there anything else in this entry of 53 million other than the Mr. Hoffman deal? A. Nope. Q. Okay. I had a follow-up question on the you had previously talked about the social tax and the payroll tax in certain of these entries. Do you remember that? A. Yes. Q. And I didn't understand whether
2 3 4 5 6 7 8 9 10 11 12 13 14	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone. Q. Okay. But Barclays assumes a \$53 million obligation based on his work prior to the acquisition, right? A. That's correct. Q. But Barclays' willingness to pay that is contingent on at least in substantial part on how well he performs for Barclays thereafter, correct? A. That is correct. As well as Mr. Hoffman being in employment with Barclays at	2 3 4 5 6 7 8 9 10 11 12 13 14	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there anything else in this entry of 53 million other than the Mr. Hoffman deal? A. Nope. Q. Okay. I had a follow-up question on the you had previously talked about the social tax and the payroll tax in certain of these entries. Do you remember that? A. Yes. Q. And I didn't understand whether you're talking about when you have an entry
2 3 4 5 6 7 8 9 10 11 12 13 14 15	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone. Q. Okay. But Barclays assumes a \$53 million obligation based on his work prior to the acquisition, right? A. That's correct. Q. But Barclays' willingness to pay that is contingent on at least in substantial part on how well he performs for Barclays thereafter, correct? A. That is correct. As well as Mr. Hoffman being in employment with Barclays at the time.	2 3 4 5 6 7 8 9 0 11 12 13 14 15	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there anything else in this entry of 53 million other than the Mr. Hoffman deal? A. Nope. Q. Okay. I had a follow-up question on the you had previously talked about the social tax and the payroll tax in certain of these entries. Do you remember that? A. Yes. Q. And I didn't understand whether you're talking about when you have an entry for one of those taxes, are you talking about
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone. Q. Okay. But Barclays assumes a \$53 million obligation based on his work prior to the acquisition, right? A. That's correct. Q. But Barclays' willingness to pay that is contingent on at least in substantial part on how well he performs for Barclays thereafter, correct? A. That is correct. As well as Mr. Hoffman being in employment with Barclays at the time. Q. Okay. So he has to stay an	2 3 4 5 6 7 8 9 10 11 21 3 14 15 16	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there anything else in this entry of 53 million other than the Mr. Hoffman deal? A. Nope. Q. Okay. I had a follow-up question on the you had previously talked about the social tax and the payroll tax in certain of these entries. Do you remember that? A. Yes. Q. And I didn't understand whether you're talking about when you have an entry for one of those taxes, are you talking about the withholding obligation of Barclays or
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone. Q. Okay. But Barclays assumes a \$53 million obligation based on his work prior to the acquisition, right? A. That's correct. Q. But Barclays' willingness to pay that is contingent on at least in substantial part on how well he performs for Barclays thereafter, correct? A. That is correct. As well as Mr. Hoffman being in employment with Barclays at the time. Q. Okay. So he has to stay an employee at Barclays at least through the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there anything else in this entry of 53 million other than the Mr. Hoffman deal? A. Nope. Q. Okay. I had a follow-up question on the you had previously talked about the social tax and the payroll tax in certain of these entries. Do you remember that? A. Yes. Q. And I didn't understand whether you're talking about when you have an entry for one of those taxes, are you talking about the withholding obligation of Barclays or Barclays' own obligation to pay those
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	P. EXALL - HIGHLY CONFIDENTIAL A. The two agreements are distinct and separate. They're two individual contracts that stand alone. Q. Okay. But Barclays assumes a \$53 million obligation based on his work prior to the acquisition, right? A. That's correct. Q. But Barclays' willingness to pay that is contingent on at least in substantial part on how well he performs for Barclays thereafter, correct? A. That is correct. As well as Mr. Hoffman being in employment with Barclays at the time. Q. Okay. So he has to stay an employee at Barclays at least through the third payment.	2 3 4 5 6 7 8 9 0 1 1 2 3 4 1 5 6 7 8 9 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	P. EXALL - HIGHLY CONFIDENTIAL individual agreement with this Mr. Hoffman? A. Yes, there is. Q. Okay. And okay. Is there anything else in this entry of 53 million other than the Mr. Hoffman deal? A. Nope. Q. Okay. I had a follow-up question on the you had previously talked about the social tax and the payroll tax in certain of these entries. Do you remember that? A. Yes. Q. And I didn't understand whether you're talking about when you have an entry for one of those taxes, are you talking about the withholding obligation of Barclays or Barclays' own obligation to pay those authorities?
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	Page 138		Page 139
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	A. Yes.	2	to pay him a cash advance of \$4.56 million.
3	Q. So when you have an entry in here	3	That's a gross amount payable to him. He in
4	on payroll tax, for example, is that where	4	his individual capacity has to pay income tax
5	it says payroll tax on equity compensation, do	5	which we will withhold in entirety. The
6	you remember that discussion?	6	entire 4.56 is embodied in the 1,271 cash
7	A. Yes.	7	component effectively.
8	Q. Is that just a withholding tax or	8	Q. Okay. And I don't think I asked
9	is it an obligation of Barclays to pay the tax	9	you this but if we go to that bonus entry with
10	authorities?	10	social tax, do you see that?
11	MR. GREEN: Object to the form.	11	A. Yes.
12	A. I actually don't know the answer	12	Q. The 1.529 billion. Could you give
13	to that. It is a tax that's due and payable	13	me a percentage how much of that is the
14	to the regulatory authorities. As to whom	14	social tax portion and how much is the actual
15	that liability relates, I don't know.	15	bonus paid to that individual?
16	Q. Okay. And would that be the same	16	MR. GREEN: Object to form.
17		17	
\	answer with respect to the social tax up in	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	Q. Gross bonus paid to that
18	the bonus entry?	18	individual.
19	A. Yes.	19	A. I don't have the exact amount but
20	Q. Okay.	20	I would categorize it as not significant.
21	A. What I can say is that the	21	Q. Can you ball park percentages?
22	withholding taxes that you referred to that	22	A. Crickey.
23	are these are the gross amounts payable to	23	If I had to guess I'd say maybe
24	those individuals in terms of so if I refer	24	\$50 million.
25	again back to Mr. Lowitt's contract, we've got	25	Q. \$50 million? Okay. And
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	Page 140		Page 141
1	Page 140 P. EXALL - HIGHLY CONFIDENTIAL	1	Page 141 P. EXALL - HIGHLY CONFIDENTIAL
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	P. EXALL - HIGHLY CONFIDENTIAL A. And the reason I say that and, again, not being a payroll professional I can't speak for every social tax that may or may not be payable as part of a payroll. Q. Sure. A. But one of thethe only one is the FICA taxes that are payable to the US tax authorities in whichever form that may be. That's I know is 1 point something percent. It's a very small percentage. So I'm basing my estimate on that primarily. I do not believe that that if I was to look at that line and if you I would categorize the social tax item as being not significantly material. Q. Okay. And there are documents somewhere at Barclays that would specify how much that social tax is with respect to those bonuses? A. Yes.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	P. EXALL - HIGHLY CONFIDENTIAL need to ask that question. I apologize. I misunderstood that. A. Okay. Q. Okay. The payroll tax on acquisition buyout, what is that? A. The \$3 million reflected on the schedule, I believe or I understand the calculation to be similar to the one referenced in the payroll tax and equity tax line in compensation of \$53 million shown directly above it on the schedule. Q. So that relates only to Mr. Hoffman's deal with Barclays? A. That's my understanding. Q. And that money doesn't get paid to him; it he gets paid to a regulatory authority? A. That's my understanding. Q. Can we skip down to ISP awards. Could you explain to me what that is?
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2 3 4 5 6 7 8 9 0 1 1 1 1 1 1 1 1 1 1 1 1 1	P. EXALL - HIGHLY CONFIDENTIAL A. And the reason I say that and, again, not being a payroll professional I can't speak for every social tax that may or may not be payable as part of a payroll. Q. Sure. A. But one of the the only one is the FICA taxes that are payable to the US tax authorities in whichever form that may be. That's I know is 1 point something percent. It's a very small percentage. So I'm basing my estimate on that primarily. I do not believe that that if I was to look at that line and if you I would categorize the social tax item as being not significantly material. Q. Okay. And there are documents somewhere at Barclays that would specify how much that social tax is with respect to those bonuses? A. Yes. Q. Okay. How about the payroll tax on equity compensation?	1 2 3 4 5 6 7 8 9 0 1 1 2 1 3 4 5 6 7 8 9 0 1 1 2 1 3 4 5 6 7 8 9 2 1 2 2 3	P. EXALL - HIGHLY CONFIDENTIAL need to ask that question. I apologize. I misunderstood that. A. Okay. Q. Okay. The payroll tax on acquisition buyout, what is that? A. The \$3 million reflected on the schedule, I believe or I understand the calculation to be similar to the one referenced in the payroll tax and equity tax line in compensation of \$53 million shown directly above it on the schedule. Q. So that relates only to Mr. Hoffman's deal with Barclays? A. That's my understanding. Q. And that money doesn't get paid to him; it he gets paid to a regulatory authority? A. That's my understanding. Q. Can we skip down to ISP awards. Could you explain to me what that is? A. The acronym? Q. Yes.
2 3 4 5 6 7 8 9 0 11 12 13 14 15 16 17 18 19 20 21 22 23 24 24 24 24 24 24 24 24 24 24 24 24 24	P. EXALL - HIGHLY CONFIDENTIAL A. And the reason I say that and, again, not being a payroll professional I can't speak for every social tax that may or may not be payable as part of a payroll. Q. Sure. A. But one of thethe only one is the FICA taxes that are payable to the US tax authorities in whichever form that may be. That's I know is 1 point something percent. It's a very small percentage. So I'm basing my estimate on that primarily. I do not believe that that if I was to look at that line and if you I would categorize the social tax item as being not significantly material. Q. Okay. And there are documents somewhere at Barclays that would specify how much that social tax is with respect to those bonuses? A. Yes. Q. Okay. How about the payroll tax on equity compensation? A. What's your question?	123456789011234156789012234	P. EXALL - HIGHLY CONFIDENTIAL need to ask that question. I apologize. I misunderstood that. A. Okay. Q. Okay. The payroll tax on acquisition buyout, what is that? A. The \$3 million reflected on the schedule, I believe or I understand the calculation to be similar to the one referenced in the payroll tax and equity tax line in compensation of \$53 million shown directly above it on the schedule. Q. So that relates only to Mr. Hoffman's deal with Barclays? A. That's my understanding. Q. And that money doesn't get paid to him; it he gets paid to a regulatory authority? A. That's my understanding. Q. Can we skip down to ISP awards. Could you explain to me what that is? A. The acronym? Q. Yes. A. The ISP stands for incentive share
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	P. EXALL - HIGHLY CONFIDENTIAL A. And the reason I say that and, again, not being a payroll professional I can't speak for every social tax that may or may not be payable as part of a payroll. Q. Sure. A. But one of the the only one is the FICA taxes that are payable to the US tax authorities in whichever form that may be. That's I know is 1 point something percent. It's a very small percentage. So I'm basing my estimate on that primarily. I do not believe that that if I was to look at that line and if you I would categorize the social tax item as being not significantly material. Q. Okay. And there are documents somewhere at Barclays that would specify how much that social tax is with respect to those bonuses? A. Yes. Q. Okay. How about the payroll tax on equity compensation?	1 2 3 4 5 6 7 8 9 0 1 1 2 1 3 4 5 6 7 8 9 0 1 1 2 1 3 4 5 6 7 8 9 2 1 2 2 2 3	P. EXALL - HIGHLY CONFIDENTIAL need to ask that question. I apologize. I misunderstood that. A. Okay. Q. Okay. The payroll tax on acquisition buyout, what is that? A. The \$3 million reflected on the schedule, I believe or I understand the calculation to be similar to the one referenced in the payroll tax and equity tax line in compensation of \$53 million shown directly above it on the schedule. Q. So that relates only to Mr. Hoffman's deal with Barclays? A. That's my understanding. Q. And that money doesn't get paid to him; it he gets paid to a regulatory authority? A. That's my understanding. Q. Can we skip down to ISP awards. Could you explain to me what that is? A. The acronym? Q. Yes.

Page 142 Page 143 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 2 2 name of the stock award program we have in and unanticipated delay in making the awards 3 place at Barclays and which we will utilize to 3 to individuals, during that period the stock 4 make these relevant awards. price at Barclays appreciated substantially 4 5 5 Q. Is this a plan that was in place and in effect individuals received an amount 6 6 at Lehman prior to the acquisition? of stock units of less than what they would 7 A. This plan was not in place at have received had the awards been made under 8 Lehman, no. They had similar stock award 8 the normal process in March 2009 because of 9 programs under their own compensation schemes. 9 the increase in the stock price. 10 10 Q. Okay. And so what is this The \$56 million reflects 11 11 \$56 million being paid for? additional shares awarded to those -- to 12 12 A. Okay. So these -- the \$56 million former Lehman Brothers employees and the 13 13 directly relates to the \$258,000,000 further awards were not exclusive to former Lehman 14 up in the Equity column under Bonus Including 14 Brothers employees. This just reflects the 15 Social Taxes. 15 component related to former Lehman Brothers 16 16 The sequence of events was as employees to compensate them for that loss of 17 17 value that they had suffered as a result of follows. Under normal Barclays policy stock 18 awards are made in March of every year. So 18 the normal process not having been followed in 19 under the normal practice Barclays would have 19 that particular year. 20 made stock awards to individuals in March of 20 Q. So just so I understand why --21 2009 in respect of their 2008 annual bonuses. 21 what caused the delay in the award of the 22 22 bonus -- of the stock bonuses? Q. Okay. 23 A. I can't speak for the specific A. The stock awards for various 24 reasons were made in May 2009. The value of 24 reason why. I know there was a delay. 25 25 the awards -- well, because of the unforeseen Q. Was it related to the Page 144 Page 145 1 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 2 **Barclays/Lehman acquisition?** 2 March 2009 was a dollar. He would have got a 3 A. No. Not to my knowledge. 3 hundred shares. Those awards were never made 4 Q. Okay. So this -- if I understand 4 in March. What happened was they were made in 5 you correctly, this \$56 million only relates 5 May. In May let's assume for argument's sake 6 6 to stock awards granted to former Lehman the stock was \$2. He would only have got 50 7 employees, right? shares. He got -- and he's lost the stock 8 8 price appreciation he would have got on the A. This \$56 million dollars, yes. 9 9 Q. All right. And it's to compensate hundred shares had he been awarded them three 10 10 them for the delay in awarding that award from months prior. 11 March until May. 11 The \$56 million is to compensate 12 12 A. That's correct. him for that loss of value in the respect of 13 13 Q. But aren't the Lehman Brothers the fewer amounts of shares that he ultimately 14 employees granted their award back in 14 15 15 September? Q. Okay. So it's actually the --16 16 A. They were given a value, a dollar it's the value of the appreciation of the 17 17 value of award. When it comes to granting an stock he would have received from March to 18 May. amount of stock units they get an amount of 18 19 stock units based on the prevailing share 19 A. It's not the entire value. It's 20 price at the time of the award grant. 20 to compensate him for that loss of value. I 21 21 So they would have received -don't believe that the entire value is 22 I'll give you a hypothetical example. An 22 reflected in this number. It was to 23 individual would have had \$100 worth of stock 23 compensate him for an extent of that, yes. of value that was to be delivered to him in 24 Q. Well, here's my question. If he's 24 25 March of 2009. Assume the stock price in granted in September \$100 worth of stock bonus

Page 146 Page 147 1 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 2 he would have gotten a hundred shares in 2 A. That's the difference. 3 3 March -- or he would have gotten a hundred Q. I see. So this is done not only 4 shares in March if the price was a dollar 4 for the former Lehman employees. It's also 5 5 using your hypothetical, right? He would also done for all the other Barclays employees who 6 6 have gotten his hundred shares in May if he suffered this same type of loss, right? 7 7 gets 50 shares at \$2. Why --A. They were granted for the 8 8 MR. GREEN: Object to the form. majority -- for other Barclays Capital 9 Q. Well, I'm trying to use your 9 employees that received stock awards at the 10 10 time for the most part, yes. hypothetical. Q. So this is not --11 A. My hypothetical is that he would 11 12 not have got the hundred shares in May. He 12 A. This is a subset of a wider 13 13 would have only got 50 shares in May. population. 14 But it would be worth \$2 at that 14 Q. This program, this ISP award was 15 15 not granted to former Lehman employees. It time. 16 16 A. That's correct. The value would was granted Barclays wide to those who 17 17 have been the same. But he has lost that. qualified, right? 18 Rewind to March. If he had been awarded the 18 A. To my knowledge, it was not 19 19 shares in March he would have a hundred shares granted Barclays wide. It was Barclays 20 20 worth a dollar. Those shares by May would Capital wide. 21 21 have been worth 200 at the stock price of 2. Q. Okay. 22 22 A. I don't -- I can't testify as to Q. Okay. 23 23 A. You're giving him only a hundred if it was that specific, but there were more 24 of value in May. 24 individuals concerned than this. I cannot say 25 25 it was a Barclays wide policy. I don't know Q. Okay. Page 148 Page 149 1 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 2 2 A. They all relate to the awards that to be true. 3 Q. But it's not a former Lehman 3 embodied -- well, if I take Mr. Lowitt as an 4 4 example, any additional shares he would have employees policy only. 5 A. Not only, no. 5 been awarded under that program relate to the 6 6 Q. Okay. So then why is this 2008 EPP recommendations that embodied in his 7 award -- how is this award related to the work contract and the value thereof. 8 8 they performed at Lehman? Because, I mean, Q. I understand how they relate to 9 9 basically it's compensating them for a delay it. But the award -- isn't it true that the 10 10 in a stock payment while at Barclays. award itself of the ISP is to compensate them for mistakes or whatever problems occurred at 11 11 MR. GREEN: Object to the form. 12 12 A. The amount of the award is derived **Barclays that caused this delay from March to** 13 13 directly from the equity awards that would May, right? 14 have been made under the normal course of 14 MR. GREEN: Object to the form. 15 15 A. I can say that the \$56 million has business. And insofar as they are related to 16 pre-acquisition service on behalf of Lehman 16 nothing to do with post-acquisition service of 17 17 Barclays PLC. It has everything to do with Brothers, these -- the value of these awards, 18 the services that they provided 18 the economic cost of these awards relate to 19 19 pre-acquisition to Lehman Brothers. that pre-acquisition service. It relates to 20 the delivery of the stock component of 20 Q. I'm not sure you've answered my 21 21 compensation in many cases embodied in question. I understand that the 258 million 22 contracts such as Mr. Lowitt's here. Had they 22 comes from their pre-acquisition services. 23 23 been awarded in the normal course of business But this additional 56 million, isn't it the 24 in March of 2009. 24 case, is paid to them because of some mistakes 25 O. Okay. But -or whatever happened at Barclays that caused

Page 150 Page 151 1 P. EXALL - HIGHLY CONFIDENTIAL P. EXALL - HIGHLY CONFIDENTIAL 1 2 2 this delay in awarding the bonus, right? question? 3 MR. GREEN: Object to the form. 3 (Record read.) A. It directly relates to the \$258 4 4 Q. Is that right? 5 million insofar as the \$56 million is derived 5 A. No. In my personal opinion it is 6 specifically from the \$258 million reflected 6 not. The \$56 million would have been 7 7 on the schedule. valued -- would have accrued to these 8 8 Q. All right. I understand how it's individuals had they received their stock 9 derived from the 258 million and I understand 9 awards under the normal course of business. 10 10 how the 258 million is derived from their It was directly compensation related to pre-acquisition work. But the 56 million is pre-acquisition services in relation to Lehman 11 11 12 not compensation for pre-acquisition work. 12 Brothers as derived from the shares that they 13 13 would have got had the normal course of MR. GREEN: Asked and answered. Bill, I think you've asked this question 14 14 business been followed. 15 three times and he's given you his 15 Q. Okay. Now, the payroll tax on 16 16 those awards, what is that? answer. 17 17 MR. HINE: Well, I'm getting what A. The calculation of those again is 18 seems to be an evasive answer. 18 an accounting -- is an estimate similar to the 19 one reflected previously on the schedule 19 MR. GREEN: No. He's given you an 20 entitled Payroll Tax on Equity Compensation. 20 answer and it's an entirely appropriate answer and there's no reason to ask it 21 Q. So same method of estimating only 21 22 now you're estimating it based on 56 million? 22 until you get the answer you want. 23 MR. HINE: All right. I just want A. That's correct. 23 24 an answer to the last one I asked. 24 Q. Okay. Back to the 56 million for 25 25 MR. GREEN: Could you repeat the a second. It says here Additional shares Page 152 Page 153 P. EXALL - HIGHLY CONFIDENTIAL 1 1 P. EXALL - HIGHLY CONFIDENTIAL 2 awarded at 25P. What does that P mean? 2 the exact amounts. I don't believe it's an 3 A. Pence. English pence. English 3 exact lack-for-lack replacement. I can't 4 speak to whether it was more or less but I 4 pounds. 5 O. So is that the equivalent of 5 believe it was less. 6 6 Q. Okay. Substantially less or 25 percent? A. Yes. 25 cents on the dollar. 7 iust --8 Q. Okay. So 25 cents on the dollar 8 A. I don't recall. 9 as measured against the value of a Barclays 9 Q. Okay. But if I wanted to find 10 share from March to May? 10 that out I would take the share price from A. No. That's not correct. So if 1 11 **Barclays in March and compare it to May?** 12 12 you related back to the 258 it's roughly a A. You would think so. That's not 13 practically how things work. The stock awards 13 quarter. 14 Q. Oh, I gottcha. 25 cents on the 14 at any point in time are generally based on an 15 dollar as compared to the 258 million. 15 average stock price calculated over a number of days in which stock would have been L6 A. That would be correct. 16 17 Q. Okay. And 25 cents is not total 17 purchased in the market to hedge the awards. compensation for the value increase in 18 So there is a process underpinning 18 19 Barclays' share but it's a portion of the --19 it. There is some math -- there is 20 it's based on the -- as a portion of the 20 mathematical calculations behind all this that 21 21 increase in Barclays' share price from March had been produced. But you can't simply just 22 to May? 22 take a spot price at a point in time. 23 23 MR. GREEN: Object to form. Q. I gottcha. A. I don't recall the loss of value Now, if I look at the bottom line 24 24 25 or the notional loss of value. I don't recall it says Total Spend. Do you see that?

Page 154 Page 155 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 2 2 paid by March 15th of 2009? A. I do. 3 3 MR. GREEN: Object to the form. Q. That is -- that's not what **Barclays has spent to date, correct? Because** 4 4 A. I've seen the date March 15th, 5 that includes future payment. 5 2009. I'm unsure as to what that obligates 6 MR. GREEN: Object to the form. 6 Barclays to do or what it doesn't obligate 7 7 A. Not all those cash payments have Barclays to do. 8 8 been made, no. Q. Okay. So, in other words, the 9 9 March 15th, 2009 date is not something you've Q. Okay. In other words, if I wanted 10 10 been shooting to comply with in the course of to know the total amount that has been paid to 11 11 date, I would look up to the \$1.543 billion compensating these employees? 12 12 MR. GREEN: Object to the form of number? 13 13 the question. Are you speaking to him A. On this schedule that would be 4 14 correct. I would suspect that on further personally? 15 15 reconciliation some of the 27 million MR. HINE: Well, he's not paying 16 16 reflected as severance under the payable in them. Barclays is paying them. 17 the future may well flip up into the previous 17 MR. GREEN: Okay. So --18 18 Q. Is the March 15th, 2009 date category. 19 19 something that Barclays has taken into Q. Okay. 20 20 consideration when it's paid these employees A. And obviously as time moves on 21 these various forms of compensation? 21 other amounts will. 22 Q. Well, in the course of working on 22 MR. GREEN: Object to the form. 23 23 the compensation for these former Lehman You may answer if you know. 24 employees were you aware that there's a 24 A. I don't know specifically whether 25 we've taken -- it's a date that we know of. 25 provision in the APA that required them to be Page 156 Page 157 1 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL But I can't answer for the specific wording of 2 they would have been aware of the value of 2 3 your question when you refer to paid. Can you 3 that stock. 4 rephrase that perhaps in some different way? Q. Okay. 4 5 Q. Yeah, let's try this. You see the 5 A. As opposed to the amount of units 6 6 entry for bonuses, bonus including social tax? they would receive. But, again, I'm not 7 7 A. Excuse me. Oh, sorry. On the specific on the date. 8 8 Q. And the delay you talked about was schedule? 9 9 Q. On the spreadsheet. the one you previously mentioned from March to 10 10 A. Yes. May? 11 Q. Was that all paid or committed by 11 A. That's correct. In terms of the 12 12 March 19th, 2009? equity awards, yes. Q. Any other entries on this A. The cash amounts -- certainly I 13 13 14 would say the vast majority if not all, but 14 spreadsheet that were made before March 15th 15 15 there's always an exception. People sometimes 2008 -- 2009? 16 16 don't want to be paid at a particular point in A. March 15th? Sorry? Could you time. Those cash amounts would in the 17 17 say that again? Sorry. I missed the 18 18 majority have been paid and discharged by that question. 19 19 Q. Were any other entries on this time. 20 20 spreadsheet paid before March 15th, 2009? Q. Okay. 21 A. The equity awards, again, I've 21 MR. GREEN: Objection to form. 22 explained to you the delay in the award of 22 You may answer if you know. 23 value -- the award of the amount of shares. A. Yes. There were entries on the 23 24 But I believe that at the time of bonus there spreadsheet prior to March 15th, 2009. 24 25 Q. Like what? were compensation communications for employees

	31	T	194
	Page 158		Page 159
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	A. An example would have been	2	A. I don't know exactly when that was
3	severance payments made to individuals	3	paid.
4	terminated under the RIF, reduction in force	4	Q. Okay. Could you turn to the APA
5		5	
6	program in Q4 2008 and Q1 2009 as one example.	6	again. Section 9.1(c).
	Q. Okay. Any others?		A. (Witness complies.)
7	A. There are likely to be some bonus	7	Q. And I know you're not a lawyer and
8	advances that were made to particular	8	I'm not trying to trip you up here but if you
9	individuals that are included in the 1,271	9	refer to the section where it says do you
10	number which is bonus to clean social taxes.	10	see the sentence about a third of the way down
11	They may well have been paid prior to the 15th	11	the paragraph that starts, "Any amounts that
12	of March 2009.	12	would have been allocated in respect of any
13	Q. Okay. Any others?	13	transferred employee who voluntarily
14	A. Off the obviously, the pre-22/9	14	terminates employment before such award is
15	payroll items would have been discharged and	15	made shall instead be allocated among the
16	paid prior to the 15th of March 2009.	16	remaining transferred employees."
17	Q. Why? When were they paid?	17	Do you see that?
18	A. Well, as I've said to you 5	18	A. I do.
19	million of the \$12 million relate to payrolls	19	Q. Did that ever happen?
20	that had to be made in September of 2008.	20	MR. GREEN: Objection to form.
21	Q. So they were paid in September	21	You can answer if you know.
22	2008.	22	A. I don't know. Did what ever
23	A. That's my understanding.	23	happen?
24	Q. Okay. And the ex-pat regulatory	24	Q. Well, did someone who was supposed
25	sum of \$7 million, that was	25	to get a bonus, for example, and voluntarily
	Page 160		Page 161
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	terminated did the bonus that he was supposed		
3		2	recall.
1 1	to get thrown back in and get distributed	3	recall. Q. Do you know if Mr. McDade signed
4	to get thrown back in and get distributed among the remaining transferred employees?		recall.
4 5	to get thrown back in and get distributed	3	recall. Q. Do you know if Mr. McDade signed this employment contract with Barclays? A. No, I don't.
4 5 6	to get thrown back in and get distributed among the remaining transferred employees?	3 4	Q. Do you know if Mr. McDade signed this employment contract with Barclays?
4 5	to get thrown back in and get distributed among the remaining transferred employees? A. I don't know. I mean, there were	3 4 5	recall. Q. Do you know if Mr. McDade signed this employment contract with Barclays? A. No, I don't.
4 5 6	to get thrown back in and get distributed among the remaining transferred employees? A. I don't know. I mean, there were people that resigned.	3 4 5 6	recall. Q. Do you know if Mr. McDade signed this employment contract with Barclays? A. No, I don't. Q. You don't know?
4 5 6 7	to get thrown back in and get distributed among the remaining transferred employees? A. I don't know. I mean, there were people that resigned. Q. Yeah.	3 4 5 6 7	recall. Q. Do you know if Mr. McDade signed this employment contract with Barclays? A. No, I don't. Q. You don't know? A. I don't know.
4 5 6 7 8	to get thrown back in and get distributed among the remaining transferred employees? A. I don't know. I mean, there were people that resigned. Q. Yeah. And they got nothing as they left.	3 4 5 6 7 8	recall. Q. Do you know if Mr. McDade signed this employment contract with Barclays? A. No, I don't. Q. You don't know? A. I don't know. Q. Okay. Just as an aside, do you
4 5 6 7 8 9	to get thrown back in and get distributed among the remaining transferred employees? A. I don't know. I mean, there were people that resigned. Q. Yeah. A. And they got nothing as they left. Q. Okay. Let me give you a specific	3 4 5 6 7 8 9	recall. Q. Do you know if Mr. McDade signed this employment contract with Barclays? A. No, I don't. Q. You don't know? A. I don't know. Q. Okay. Just as an aside, do you see the date is September 18th, 2008?
4 5 6 7 8 9	to get thrown back in and get distributed among the remaining transferred employees? A. I don't know. I mean, there were people that resigned. Q. Yeah. A. And they got nothing as they left. Q. Okay. Let me give you a specific question then.	3 4 5 6 7 8 9	recall. Q. Do you know if Mr. McDade signed this employment contract with Barclays? A. No, I don't. Q. You don't know? A. I don't know. Q. Okay. Just as an aside, do you see the date is September 18th, 2008? A. I do.
4 5 6 7 8 9 10 11	to get thrown back in and get distributed among the remaining transferred employees? A. I don't know. I mean, there were people that resigned. Q. Yeah. A. And they got nothing as they left. Q. Okay. Let me give you a specific question then. MR. HINE: Let's mark this.	3 4 5 6 7 8 9 10	recall. Q. Do you know if Mr. McDade signed this employment contract with Barclays? A. No, I don't. Q. You don't know? A. I don't know. Q. Okay. Just as an aside, do you see the date is September 18th, 2008? A. I do. Q. Which is prior to the September 22nd closing.
4 5 6 7 8 9 10 11 12	to get thrown back in and get distributed among the remaining transferred employees? A. I don't know. I mean, there were people that resigned. Q. Yeah. A. And they got nothing as they left. Q. Okay. Let me give you a specific question then. MR. HINE: Let's mark this. (Deposition Exhibit 282B, document bearing production numbers	3 4 5 6 7 8 9 10 11 12 13	recall. Q. Do you know if Mr. McDade signed this employment contract with Barclays? A. No, I don't. Q. You don't know? A. I don't know. Q. Okay. Just as an aside, do you see the date is September 18th, 2008? A. I do. Q. Which is prior to the September 22nd closing. Do you know how many Barclays
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	Page 162		Page 163
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	A. We could count contracts.	2	about former Lehman executives who signed
3	Q. Do you know if there was any	3	employment contracts with Barclays prior to
4	effort to offer employment terms to the	4	September 22nd, 2008?
5	what I've seen called as the Elite 8 or the	5	A. Do I have any what? Sorry.
6	top eight people at Barclays prior to the	6	Q. Understanding.
7	closing?	7	A. What does that mean?
8	MR. GREEN: Object to the form of	8	Q. Well, do you have any knowledge
9	the question. When you say closing what	9	that, for example, Mr. Lowitt signed his
10	date are you referring to?	10	contract before the closing?
11	MR. HINE: I'm talking about		A. I've never examined the contracts
12	September 22nd, 2008.	12	in that respect, no.
13	A. Sorry. Could you repeat the	13	
			Q. Well, I didn't ask you if you
14 15	question?	14	examined the contracts. Do you have any
\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	Q. Are you aware of any efforts to	15	understanding about whether any of the senior
16	offer employment or to discuss the terms of	16	executives at Lehman were signed up by
17	employment with former Lehman executives prior	17	Barclays before the closing?
18	to September 22nd?	18	A. I don't know.
19	A. I have no direct knowledge. I	19	Q. Okay. Back to Mr. McDade's
20	wasn't involved in any negotiations with any	20	A. Okay.
21	of these employees.	21	Q. Whether he signed it or not I'm
22	Q. Okay. Have you heard anything	22	not really sure, but my question is you'll see
23	about that?	23	in this document it refers to a cash bonus of
24	A. I don't recall.	24	2008, right? A 2008 EPP recommendation.
25	Q. Do you have any understanding	25	Do you see that?
	Page 164		Page 165
1			
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	P. EXALL - HIGHLY CONFIDENTIAL A. I see that.	1 2	P. EXALL - HIGHLY CONFIDENTIAL MR. GREEN: Objection to form.
2	P. EXALL - HIGHLY CONFIDENTIALA. I see that.Q. Do you see the special cash award?	1 2 3	P. EXALL - HIGHLY CONFIDENTIAL MR. GREEN: Objection to form. Calls for a legal conclusion.
2 3 4	 P. EXALL - HIGHLY CONFIDENTIAL A. I see that. Q. Do you see the special cash award? A. I do. 	1 2 3 4	 P. EXALL - HIGHLY CONFIDENTIAL MR. GREEN: Objection to form. Calls for a legal conclusion. A. I don't know what Section 9.1(c)
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2 3 4 5 6	P. EXALL - HIGHLY CONFIDENTIAL A. I see that. Q. Do you see the special cash award? A. I do. Q. Now, did Mr. McDade Mr. McDade resigned, correct?	1 2 3 4 5 6	P. EXALL - HIGHLY CONFIDENTIAL MR. GREEN: Objection to form. Calls for a legal conclusion. A. I don't know what Section 9.1(c) obligates Barclays to do so I can't answer that question.
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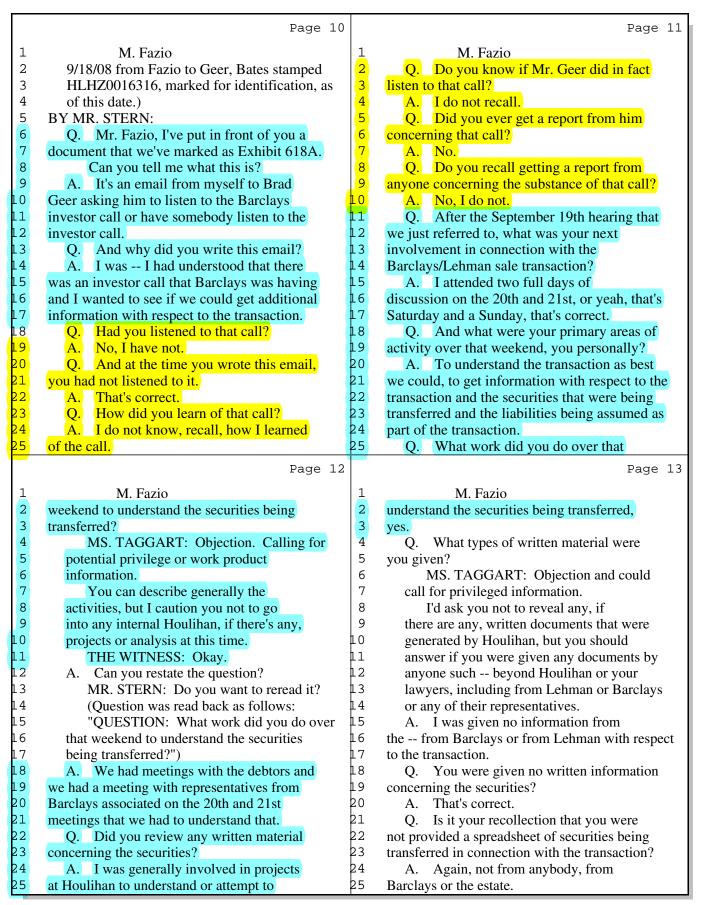
Page 166 Page 167 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 1 2 FY liability shall be reduced if..." 2 interpretation. Is it correct to say that in 3 MR. GREEN: All the way to the end 3 the course of your employment in your present 4 position you haven't heard anyone say, Oh, of the paragraph? 4 5 5 MR. HINE: Yes. more than 10 percent of the people left, we 6 6 MR. GREEN: Okay. Take your time should reduce the bonus pool? 7 MR. GREEN: Object to form. to read that. 8 8 Q. Take your time to read that but my O. Or words to that effect? 9 9 A. No one has said that to me, no. question is did that ever happen or are you 10 10 aware of that clause ever being invoked or Okay. Did you understand that 1 that many people ever left. So just take your 11 anyone was ever considering that? 12 12 time to read it. A. My understanding is that this is a 13 13 clause in the APA and people are aware of it MR. GREEN: Object to the form 14 and relevant people know what that means. It 4 before he answers the question. 15 15 (Document review.) is a consideration. It has been considered. 16 A. I can't speak for the obligations 16 I do know that. 17 that this places upon Barclays. I don't know 17 Q. But did more than 10 percent of 18 what those are. I can't interpret it. 18 the employees voluntarily terminate? 19 19 Perhaps I can answer in a MR. GREEN: Object to form. 20 20 A. I can't answer -- I can't give you different way. I don't know what it means by 21 21 voluntarily terminated. That would be my a factual answer because I don't know the 22 22 question. I don't know what exactly you're extent to which -- I don't know what you're 23 23 defining as voluntary termination. Perhaps asking me to answer. that means resignation. I don't know what 24 Q. Well, I understand you're not a 24 this actually refers to. I've never heard 25 25 lawyer and I'm not trying to ask for any legal Page 168 Page 169 1 P. EXALL - HIGHLY CONFIDENTIAL 1 P. EXALL - HIGHLY CONFIDENTIAL 2 someone -- I've never personally heard someone 2 the exact number or exact proportion but --3 say that the section of the clause would 3 leave it at that. 4 apply. 4 Q. Is it your sense that more than 5 5 Okay. And you don't have -- in 10 percent have resigned? 6 6 **your experience working in the compensation** MR. GREEN: Object. Calls for 7 7 field you don't have an understanding of what speculation. 8 8 voluntarily terminate means? A. If you want me to speculate I 9 9 A. If you're asking for what I will. I will speculate that not more than 10 10 understand by voluntarily termination I can 10 percent had voluntarily resigned under 11 11 give you my view, my personal view, and that these -- post-acquisition. 12 may be different than the interpretation of 12 Q. Okay. Fair enough. Thank you. 13 13 the APA or the position taken by Barclays. A. I mean there would be other points 14 14 My view is that that refers to in time. That's not to say that in the future 15 15 voluntary resignations by former Lehman that if you aggregated it all up --16 Brothers employees that decided 16 Q. Sure. 17 post-acquisition that they no longer wanted to 17 A. Right? 18 be employed by Barclays Capital and hence 18 Q. But you're speaking as of today. 19 19 resigned. A. I'm speaking as of today. To the 20 20 best of my knowledge, yes. O. Okay. And in your view did more 21 21 than 10 percent of the transferred employees MR. GREEN: Speculating as of 22 do that? 22 today, I might add. 23 23 A. I would like to -- well, I don't A. Speculating as of today, that's know the exact number or the exact proportion. 24 24 correct. I would -- I'd leave it at that. I don't know 25 MR. GREEN: To the best of your --

	Pg 80	<u> </u>	.JT
	Page 170		Page 171
1	P. EXALL - HIGHLY CONFIDENTIAL	1	P. EXALL - HIGHLY CONFIDENTIAL
2	A. To the best of my speculation.	2	BY MR. HINE:
3	Q. Is it fair to say you don't have	3	Q. Mr. Exall, I'm handing you a copy
4	any personal knowledge or understanding about	4	of a document marked as Exhibit 283B which
5	the circumstances of Mr. McDade leaving?	5	appears to be a W-2 statement in connection
6	A. No direct knowledge, no.	6	with issued by Barclays to Mr. McDade and
7	Q. Do you have any indirect	7	my only question is whether this provides any
8	knowledge?	8	assistance to you in trying to figure out
9	A. I don't know how or under what	9	whether Barclays paid Mr. McDade anything.
10	circumstances he left, no.	10	MR. GREEN: Object to the form of
11	C	11	the question. The document speaks for
12	• •	12	itself.
13	·	13	MR. HINE: Okay.
14	, , , , , , , , , , , , , , , , , , ,	14	MR. GREEN: Are you asking does it
15	1	15	refresh his recollection?
16	, e	16	MR. HINE: Yes.
17	understanding.	17	A. I've never seen this document.
18		18	Q. Do you know why Mr. McDade was
19		19	paid anything if at all by Barclays?
20	<u> -</u>	20	A. I have no idea. As I've said
21	` •	21	before, I have no knowledge of his
22	01	22	arrangements.
23	*	23	Q. Fair enough.
24	,	24	(Deposition Exhibit 284B, document
25		25	bearing production numbers
	Page 172		Page 173
1	Page 172 P. EXALL - HIGHLY CONFIDENTIAL	1	Page 173 P. EXALL - HIGHLY CONFIDENTIAL
1 2		1 2	
	P. EXALL - HIGHLY CONFIDENTIAL		P. EXALL - HIGHLY CONFIDENTIAL
2	P. EXALL - HIGHLY CONFIDENTIAL BCI-EX-(S)00027190 through	2	P. EXALL - HIGHLY CONFIDENTIAL analysis or this was an analysis prepared
2	P. EXALL - HIGHLY CONFIDENTIAL BCI-EX-(S)00027190 through BCI-EX-(S)00027197, marked for	2 3	P. EXALL - HIGHLY CONFIDENTIAL analysis or this was an analysis prepared daily for the purposes of the Executive
2 3 4	P. EXALL - HIGHLY CONFIDENTIAL BCI-EX-(S)00027190 through BCI-EX-(S)00027197, marked for identification as of this date.)	2 3 4	P. EXALL - HIGHLY CONFIDENTIAL analysis or this was an analysis prepared daily for the purposes of the Executive Committee of Barclays Capital for a certain
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2 3 4 5 6 7 8 9	P. EXALL - HIGHLY CONFIDENTIAL BCI-EX-(S)00027190 through BCI-EX-(S)00027197, marked for identification as of this date.) BY MR. HINE: Q. Mr. Exall, I've handed you a copy of a document marked as Exhibit 284B which is an e-mail dated September 23rd and the attachment thereto is Bates stamped	2 3 4 5 6 7 8 9	P. EXALL - HIGHLY CONFIDENTIAL analysis or this was an analysis prepared daily for the purposes of the Executive Committee of Barclays Capital for a certain period following the acquisition. Q. Is it still prepared daily? A. No. Q. So this is immediately following the acquisition this is a daily
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	Page 1		
1			
2	UNITED STATES BANKRUPTCY COURT		
3	SOUTHERN DISTRICT OF NEW YORK		
4			
5	X		
	Tro Dot		
6	In Re:		
7	Chapter 11 LEHMAN BROTHERS Case No. 08-13555(JMP)		
	` '		
8	HOLDINGS, INC., et al., (Jointly Administered)		
9			
	Debtors.		
10	X		
11			
12	VIDEOTAPED DEPOSITION		
13	OF		
14	MICHAEL A. FAZIO		
15	New York, New York		
16	Friday, February 12, 2010		
17			
18			
19			
20			
21			
22			
24	Demonstrad land		
21	Reported by:		
25	ANNETTE ARLEQUIN, CCR, RPR JOB NO. 27497		
	00D NO. 2/17/		

	Page 6		Page 7
1			
1	M. Fazio	1 2	M. Fazio
2	THE VIDEOGRAPHER: This is the start		MS. TAGGART: Erica Taggart with
3	of tape labeled No. 1 of the videotaped	3	Quinn, Emanuel, Urquhart, Oliver & Hedges
4	deposition of Michael Fazio in the matter	4	for the Committee and also the witness, and
5	In Re Lehman.	5	I'm here with Tyler Whitmer.
6	This deposition is being held at 575	6	THE VIDEOGRAPHER: Will the court
7	Lexington Avenue, New York, New York on	7	reporter please swear in the witness.
8	February 12th, 2010 at approximately 9:31	8	* * *
9	a.m.	9	MICHAEL A. FAZIO, called as a
10	My name is Carlos Lopez from TSG	10	witness, having been duly sworn by a
11	Reporting, Inc. and I am the legal video	11	Notary Public, was examined and testified
12	specialist.	12	as follows:
13	The court reporter is Annette	13	EXAMINATION BY
14	Arlequin in association with TSG Reporting.	14	MR. STERN:
15	Will counsel please introduce	15	Q. Good morning, Mr. Fazio.
16	yourselves for the record.	16	A. Good morning.
17	MR. STERN: Sure.	17	Q. What is your current position at
18	Jack Stern from Boies Schiller &	18	Houlihan?
19	Flexner for Barclays Capital, and with me	19	A. I'm managing director at Houlihan &
20	today is Michelle Sekowski.	20	Lokey.
21	MS. SCHAFFER: Tracy Schaffer from	21	Q. And was that your position in
22	Jones Day representing LBHI.	22	September of 2008?
23	MR. MILLS: Carl Mills from Hughes,	23	A. That was.
24	Hubbard & Reed representing James W.	24	Q. In September 2008 did you attend the
25	Giddens, SIPA Trustee.	25	hearing in the Lehman Brothers bankruptcy case
	Page 8		Page 9
1	M. Fazio	1	M. Fazio
2	to approve the sale transaction involving	2	you know, I'd overhear some parts of
3	Barclays and Lehman?	3	conversations, but I was not an active
4	A. Can you be more specific on what	4	participant in any of those conversations with
5	date?	5	various people from the estate, Barclays or
6	Q. That was a hearing on September 19th,	6	whoever was participating.
7	which was a Friday.		
8		./	
		7 8	Q. Which partner are you referring to?
9	A. Yes, I was there.	8	Q. Which partner are you referring to?A. It would have been the estate and
9	A. Yes, I was there.Q. When you arrived at the courthouse,	8 9	Q. Which partner are you referring to?A. It would have been the estate andBarclays and the estate being Weil, Gotshal.
10	A. Yes, I was there.Q. When you arrived at the courthouse,did you have any discussions with anyone from	8 9 10	 Q. Which partner are you referring to? A. It would have been the estate and Barclays and the estate being Weil, Gotshal. Q. You said you were with your partner.
10 11	A. Yes, I was there. Q. When you arrived at the courthouse, did you have any discussions with anyone from Lehman or Barclays?	8 9 10 11	 Q. Which partner are you referring to? A. It would have been the estate and Barclays and the estate being Weil, Gotshal. Q. You said you were with your partner. A. That's correct.
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Confidential



	Page 14		Page 15
1	M. Fazio	1	M. Fazio
2	Q. Did you receive spreadsheets from any	2	Q. When you say "correspondence," do you
3	other source?	3	mean face-to-face meetings?
4	MS. TAGGART: It's okay. You can	4	A. That's correct.
5	answer.	5	Q. Aside from discussions concerning the
6	A. I would have received information	6	securities, did you do any independent analysis
7	from our lawyers with respect to securities	7	of the composition of those securities?
8	which represent securities that were indicated	8	MS. TAGGART: I'm going to object on
9	to us being a detail of securities from earlier	9	attorney-client and work product privilege.
10	in the week that were thought to being	10	If you did any analysis that you
11	transferred.	11	shared with anyone other than Houlihan and
12	Q. What did you do to analyze that	12	your attorneys, you should go ahead and
13	information?	13	answer, otherwise I'd instruct you not to
14	MS. TAGGART: I'm going to object to	14	answer any analysis that was internal
15	the extent it calls for any internal	15	Houlihan or correspondence with your
16	Houlihan analysis.	16	attorneys.
17	But you can describe either any	17	A. I did internal analysis.
18	general tasks that you did or any	18	Q. Did you draw any conclusions as a
19	correspondence with anyone outside of	19	result of that analysis concerning the value of
20	Houlihan or your attorneys.	20	the securities you reviewed?
21	A. We had correspondence with Jim Seery,	21	MS. TAGGART: You can hold on.
22	with Mr. Klein, who was Barclays' investment	22	I'm going to object on
23	banker, with respect to the securities being	23	attorney-client and work product privilege
24	transferred on that, on the Friday. It was	24	and instruct you not to answer.
25	Saturday and Sunday.	25	BY MR. STERN:
	Page 16		Page 17
1	M. Fazio	1	M. Fazio
2	M. Fazio Q. I show you next a document that we	1 2	M. Fazio Q. Did you do anything to determine
2 3	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B.	1 2 3	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing
2 3 4	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B. Looking at Exhibit 461B, can you tell	1 2 3 4	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing source concerning the securities listed on the
2 3 4 5	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B. Looking at Exhibit 461B, can you tell me what this is?	1 2 3 4 5	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing source concerning the securities listed on the spreadsheet?
2 3 4 5 6	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B. Looking at Exhibit 461B, can you tell me what this is? A. It appears to be an email from Brian	1 2 3 4 5 6	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing source concerning the securities listed on the spreadsheet? MS. TAGGART: Object to form.
2 3 4 5 6 7	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B. Looking at Exhibit 461B, can you tell me what this is? A. It appears to be an email from Brian Kelly from Milbank to myself and Ann Makowski,	1 2 3 4 5 6 7	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing source concerning the securities listed on the spreadsheet? MS. TAGGART: Object to form. But you can answer.
2 3 4 5 6 7 8	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B. Looking at Exhibit 461B, can you tell me what this is? A. It appears to be an email from Brian Kelly from Milbank to myself and Ann Makowski, which has detailed spreadsheets associated with	1 2 3 4 5 6 7 8	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing source concerning the securities listed on the spreadsheet? MS. TAGGART: Object to form. But you can answer. A. I had staff that reported to me do
2 3 4 5 6 7 8 9	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B. Looking at Exhibit 461B, can you tell me what this is? A. It appears to be an email from Brian Kelly from Milbank to myself and Ann Makowski, which has detailed spreadsheets associated with a list of securities that were detailed and	1 2 3 4 5 6 7 8 9	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing source concerning the securities listed on the spreadsheet? MS. TAGGART: Object to form. But you can answer. A. I had staff that reported to me do some analysis with respect to the ability to get
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B. Looking at Exhibit 461B, can you tell me what this is? A. It appears to be an email from Brian Kelly from Milbank to myself and Ann Makowski, which has detailed spreadsheets associated with a list of securities that were detailed and alleged to be the securities that were being transferred on the associated with the sale. Q. Do you know who provided this information to Mr. Kelly? A. I do not. Q. Did you review the attached spreadsheets and information on September 21,	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing source concerning the securities listed on the spreadsheet? MS. TAGGART: Object to form. But you can answer. A. I had staff that reported to me do some analysis with respect to the ability to get prices on some of the securities in the analysis, yes. Q. And what did they report to you? MS. TAGGART: I'm going to object and instruct you not to answer on attorney-client and work product privilege. BY MR. STERN:
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B. Looking at Exhibit 461B, can you tell me what this is? A. It appears to be an email from Brian Kelly from Milbank to myself and Ann Makowski, which has detailed spreadsheets associated with a list of securities that were detailed and alleged to be the securities that were being transferred on the associated with the sale. Q. Do you know who provided this information to Mr. Kelly? A. I do not. Q. Did you review the attached spreadsheets and information on September 21, 2008?	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing source concerning the securities listed on the spreadsheet? MS. TAGGART: Object to form. But you can answer. A. I had staff that reported to me do some analysis with respect to the ability to get prices on some of the securities in the analysis, yes. Q. And what did they report to you? MS. TAGGART: I'm going to object and instruct you not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Was your staff able to obtain
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B. Looking at Exhibit 461B, can you tell me what this is? A. It appears to be an email from Brian Kelly from Milbank to myself and Ann Makowski, which has detailed spreadsheets associated with a list of securities that were detailed and alleged to be the securities that were being transferred on the associated with the sale. Q. Do you know who provided this information to Mr. Kelly? A. I do not. Q. Did you review the attached spreadsheets and information on September 21, 2008? A. Yes, I did.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing source concerning the securities listed on the spreadsheet? MS. TAGGART: Object to form. But you can answer. A. I had staff that reported to me do some analysis with respect to the ability to get prices on some of the securities in the analysis, yes. Q. And what did they report to you? MS. TAGGART: I'm going to object and instruct you not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Was your staff able to obtain publicly available pricing information for all
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B. Looking at Exhibit 461B, can you tell me what this is? A. It appears to be an email from Brian Kelly from Milbank to myself and Ann Makowski, which has detailed spreadsheets associated with a list of securities that were detailed and alleged to be the securities that were being transferred on the associated with the sale. Q. Do you know who provided this information to Mr. Kelly? A. I do not. Q. Did you review the attached spreadsheets and information on September 21, 2008? A. Yes, I did. Q. What type of analysis did you do concerning the securities listed in the	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing source concerning the securities listed on the spreadsheet? MS. TAGGART: Object to form. But you can answer. A. I had staff that reported to me do some analysis with respect to the ability to get prices on some of the securities in the analysis, yes. Q. And what did they report to you? MS. TAGGART: I'm going to object and instruct you not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Was your staff able to obtain publicly available pricing information for all of the securities on the spreadsheets? MS. TAGGART: Hold on.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B. Looking at Exhibit 461B, can you tell me what this is? A. It appears to be an email from Brian Kelly from Milbank to myself and Ann Makowski, which has detailed spreadsheets associated with a list of securities that were detailed and alleged to be the securities that were being transferred on the associated with the sale. Q. Do you know who provided this information to Mr. Kelly? A. I do not. Q. Did you review the attached spreadsheets and information on September 21, 2008? A. Yes, I did. Q. What type of analysis did you do concerning the securities listed in the spreadsheet?	1 2 3 4 5 6 7 8 9 0 11 12 13 14 15 16 17 18 19 20 21	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing source concerning the securities listed on the spreadsheet? MS. TAGGART: Object to form. But you can answer. A. I had staff that reported to me do some analysis with respect to the ability to get prices on some of the securities in the analysis, yes. Q. And what did they report to you? MS. TAGGART: I'm going to object and instruct you not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Was your staff able to obtain publicly available pricing information for all of the securities on the spreadsheets? MS. TAGGART: Hold on. You can answer that yes or no.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B. Looking at Exhibit 461B, can you tell me what this is? A. It appears to be an email from Brian Kelly from Milbank to myself and Ann Makowski, which has detailed spreadsheets associated with a list of securities that were detailed and alleged to be the securities that were being transferred on the associated with the sale. Q. Do you know who provided this information to Mr. Kelly? A. I do not. Q. Did you review the attached spreadsheets and information on September 21, 2008? A. Yes, I did. Q. What type of analysis did you do concerning the securities listed in the spreadsheet? MS. TAGGART: I'm going to object on	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing source concerning the securities listed on the spreadsheet? MS. TAGGART: Object to form. But you can answer. A. I had staff that reported to me do some analysis with respect to the ability to get prices on some of the securities in the analysis, yes. Q. And what did they report to you? MS. TAGGART: I'm going to object and instruct you not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Was your staff able to obtain publicly available pricing information for all of the securities on the spreadsheets? MS. TAGGART: Hold on. You can answer that yes or no. A. No.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B. Looking at Exhibit 461B, can you tell me what this is? A. It appears to be an email from Brian Kelly from Milbank to myself and Ann Makowski, which has detailed spreadsheets associated with a list of securities that were detailed and alleged to be the securities that were being transferred on the associated with the sale. Q. Do you know who provided this information to Mr. Kelly? A. I do not. Q. Did you review the attached spreadsheets and information on September 21, 2008? A. Yes, I did. Q. What type of analysis did you do concerning the securities listed in the spreadsheet? MS. TAGGART: I'm going to object on attorney-client and work product privilege	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing source concerning the securities listed on the spreadsheet? MS. TAGGART: Object to form. But you can answer. A. I had staff that reported to me do some analysis with respect to the ability to get prices on some of the securities in the analysis, yes. Q. And what did they report to you? MS. TAGGART: I'm going to object and instruct you not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Was your staff able to obtain publicly available pricing information for all of the securities on the spreadsheets? MS. TAGGART: Hold on. You can answer that yes or no. A. No. Q. Do you recall approximately what
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	M. Fazio Q. I show you next a document that we previously marked as Exhibit 461B. Looking at Exhibit 461B, can you tell me what this is? A. It appears to be an email from Brian Kelly from Milbank to myself and Ann Makowski, which has detailed spreadsheets associated with a list of securities that were detailed and alleged to be the securities that were being transferred on the associated with the sale. Q. Do you know who provided this information to Mr. Kelly? A. I do not. Q. Did you review the attached spreadsheets and information on September 21, 2008? A. Yes, I did. Q. What type of analysis did you do concerning the securities listed in the spreadsheet? MS. TAGGART: I'm going to object on	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	M. Fazio Q. Did you do anything to determine whether there was a publicly available pricing source concerning the securities listed on the spreadsheet? MS. TAGGART: Object to form. But you can answer. A. I had staff that reported to me do some analysis with respect to the ability to get prices on some of the securities in the analysis, yes. Q. And what did they report to you? MS. TAGGART: I'm going to object and instruct you not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Was your staff able to obtain publicly available pricing information for all of the securities on the spreadsheets? MS. TAGGART: Hold on. You can answer that yes or no. A. No.

	Page 18		Page 19
1		1	
1	M. Fazio		M. Fazio
2	for?	2 3	Q. At the time you received this.
	MS. TAGGART: I'm going to object and		MS. TAGGART: You can answer.
4	instruct not to answer on privilege.	4	A. On the Sunday that I received this,
5	BY MR. STERN:	5	and I don't know exactly what time, but my
6	Q. I ask you to please look at the third	6	understanding after having different discussions
7	page of this exhibit. Right there (indicating),	7	with people that the market values were market
8	that summary sheet. It may be the second page	8	values associated with collateral earlier in the
9	of your copy.		week.
10 11	1 0 , 3	10	Q. And were you ever told who assigned
	1 8	11	those market values to the collateral?
12 13		12	A. I was told that it came off of the
1.4		13	Lehman system earlier in the week.
14		14	Q. Were you given a date earlier in the
15	Do you see that?	15	week?
16		16	A. I was given Monday, Tuesday time
17		17	periods.
18	J	18	Q. And with respect to the line that
19		19	says "TP cash" and has a figure of \$7 billion
20		20	next to that, what understanding did you have
21		21	concerning that information?
22 23		22	A. There was discussion of whether or
	3	23	not securities or cash were being transferred
24	•	24	from JPMorgan associated with the transaction,
25	BY MR. STERN:	25	and it was unclear whether securities would be
	Page 20		Page 21
1	M. Fazio	1	M. Fazio
2	being transferred are cash and the cash was said	2	cash was being transferred in connection
3	to be \$7 billion. If the final securities that	3	with the transaction?")
4	were going over in cash in total, they were	4	A. We were looking at the transaction as
5	looking at it and trying to figure out what	5	a whole, so there were liabilities being assumed
6	would be transferred. So it was indicated that	6	and assets being transferred, so there was
7	at the time it was \$7 billion of cash they	7	discussion with respect to the transaction and
8	thought would be being transferred.	8	the components of the transaction and
9	Q. And when you and others on behalf of	9	understanding what was being transferred.
10		10	So since we did not have a detailed
11		11	schedule that people had said had been a final
12	MS. TAGGART: Object to form.	12	schedule of securities or cash being
13	You can answer.	13	transferred, we had nothing to object to at that
14		14	time.
15 16		15	Q. At the time you received this
16	the securities and cash.	16	information which reflects a transfer of cash of
17	Q. Did anybody acting on behalf of the	17	\$7 billion, was it your understanding that such
18	committee object that this cash was being	18	cash would be transferred to Barclays or had
19		19	been transferred to Barclays?
20	MS. TAGGART: Objection. Foundation.	20	MR. MILLS: Object to the form.
21		21	A. My understanding was that the estate
22	Sorry.	22	and Barclays were trying to figure out exactly
23		23	what securities they had and what was being
24		24	transferred associated with the transaction over
25	behalf of the committee object that this	25	the weekend.

	Page 22		Page 23
1	M. Fazio	1	M. Fazio
2	Q. Were you ever told that one possible	2	Q. If you remember.
3	approach to the transaction was that Barclays	3	A. The transaction was discussed as a
4	would retain the \$7 billion in cash?	4	whole so individual components, since we did not
5	A. If the total securities were not as	5	have a detailed schedule at all throughout this
6		6	of any detail which showed the final securities
7	represented, the value of the securities was not	7	
8	as total represented, there would have to be a	8	in cash being transferred, there was nothing to
	cash component to equate to the transaction that	9	object to.
9	was represented court.		Q. This makes reference to \$7 billion in
10	Q. And that was cash from the LBI	10	cash.
11 12	estate, correct?	11	My question is this: Did anyone, to
12	MS. TAGGART: Object to form.	12	your knowledge, object to the transfer of such
13	A. I'm not sure where the cash and who	13	cash over the preclosing weekend?
14	the repository of the cash was with and the	14	MS. TAGGART: Objection. Asked and
15	rightful owner of it, but it was, from the	15	answered. Form, foundation.
16	estate, cash would have been had to have come	16	BY MR. STERN:
17	from the estate for the transaction.	17	Q. You can answer.
18	Q. And did the committee or anybody	18	A. Since the transaction is taken as a
19	acting on behalf of the committee or anyone else	19	whole, we were not given final cash numbers or
20	in attendance that weekend, to your knowledge,	20	securities being transferred so there was
21	object to the possibility that such cash would	21	nothing to object to.
22 23	be included in the transaction?	22	Q. I understand that.
23	MS. TAGGART: Object to form and	23	Did anyone object, to your knowledge,
24	foundation.	24	to the possibility that \$7 billion in cash was
25	BY MR. STERN:	25	to be transferred as a part of the transaction?
	Page 24		Page 25
1	M. Fazio	1	M. Fazio
2	MS. TAGGART: It's been now asked and	2	to your knowledge, object to the inclusion of
3	answered four times.	3	that cash in the transaction?
4	I object to form and foundation.	4	MS. TAGGART: Object to
5	You can answer it one more time.	5	
6	MR. STERN: I don't think it's been	6	MR. MILLS: Objection to the form.
7		7	MS. TAGGART: Object to the form, to
_	answered.	1	the preface. It's argumentive. It's been
8	Can you repeat the question?	8	asked and answered. And also to
9	(Question was read back as follows:	9	foundation.
10	"QUESTION: Did anyone object, to	10	A. I believe I've answered the question
11	your knowledge, to the possibility that	11	numerous times, but I'll answer it again for
12	\$7 billion in cash was to be transferred as	12	you.
13	a part of the transaction?")	13	When we looked at the detail and we
14 <mark>15</mark> 16	A. As I've stated before, since the	14	had discussions about the detail of securities
15	transaction as a whole, we did not have detail	15	and cash being transferred, we did not have a
16	of which securities were being transferred or	16	final list of securities or cash being
17	what cash was being transferred with the	17	transferred associated with the transaction and
18	securities to offset the liabilities being	18	so there was nothing to object to associated
19		19	with the transaction since we did not have
20	object to at the time associated with cash or	20	information on the final securities or cash
21	securities being transferred.	21	being transferred.
22	Q. You had a summary sheet indicating	22	Q. At some point did Houlihan learn that
23	that \$7 billion in cash was included as part of	23	the \$7 billion in cash would be included in the
b 4	the assets being transferred to Barclays.	24	transaction?
24 25	And my question is this: Did anyone,	25	MS. TAGGART: Object to foundation.

Page 26 Page 27 1 M. Fazio 1 M. Fazio 2 2 MR. MILLS: Objection. Lehman or Barclays that that cash should not be 3 MS. TAGGART: Go ahead. 3 included in the final transaction? 4 A. I believe that subsequently and 4 MS. TAGGART: Objection. Asked and 5 subsequent information that came out and 5 answered. Form, foundation. 6 Barclays indicating that they had not received 6 BY MR. STERN: Q. Do you have any such recollection? 7 the cash, it had come to light that there was 7 8 \$7 billion that was being transferred associated 8 A. As I have stated before, we were 9 with the transaction that had not gotten 9 given this sheet. It was indicated that we did 10 transferred that Barclays was claiming that was 10 not have the final securities being transferred 11 11 owed to them. nor the cash balance associated with the 12 O. Did the committee learn at any point 12 transaction, so there was nothing to object to 13 13 that the \$7 billion in cash had initially been since we did not have the final form and 14 transferred to Barclays but then had been 14 securities that were being transferred. 5 15 removed by JPMorgan? Q. Putting aside the question of the 16 MS. TAGGART: Object to form. 16 market value of the securities listed in Exhibit 461B, did anyone indicate to you over 17 Foundation. 17 18 18 the preclosing weekend that Barclays would not A. I'm not aware. 19 19 receive the securities listed in Exhibit 461B? O. You don't know? 20 MS. TAGGART: Object to form. 20 A. I don't know. A. There was discussion that the 21 Q. Okay. Going back to the time when 21 22 you received Exhibit 461B and saw the reference 22 Barclays people and the estate people were 23 to \$7 billion in cash, do you have any specific 23 trying to reconcile the exact securities that 24 recollection of anyone acting on behalf of the 24 were being transferred because they had to 25 Creditors Committee telling representatives of 25 reconcile what securities remained in the Page 28 Page 29 1 M. Fazio 1 M. Fazio 2 2 possession of Lehman, and so there was question MS. TAGGART: Object to form. 3 3 as to which securities would finally be BY MR. STERN: 4 transferred associated with the transaction 4 Q. Do you recall that? 5 because they had to make sure that the 5 A. I recall discussions over the weekend 6 securities were in the possession of Lehman 6 about Barclays stepping into the shoes of the 7 7 Brothers. Fed. 8 Q. Did you have an understanding that 8 I don't remember if it was at the 9 certain securities had already been transferred 9 hearing on Friday or over the weekend, but I was 0 to Barclays as of that preclosing weekend? 10 not sure whether or not that transaction also 11 A. At the time, I was not aware that 11 had taken place or that it was stepping into the 2 12 shoes and had guaranteed to step into the shoes some securities might have been transferred to . 3 Barclays at that time. 13 to the Fed, and whether or not the securities 14 14 Q. Were you familiar with the fact that had been transferred and whether Barclays had 15 Barclays had replaced the Fed's financing of LBI 15 actually paid off the Fed. I was unaware 16 prior to the preclosing weekend? 16 whether or not that had happened on the Friday 17 17 MS. TAGGART: Object to form. or over the weekend. Q. Over the weekend did you learn that 18 A. Not prior to the preclosing weekend. 18 19 During the weekend I became aware of 19 it had happened? 20 20 A. There was -that, yes. 21 MS. TAGGART: Object to form. 21 Q. During the September 19th hearing, do 22 you recall Mr. Miller informing the court that 22 A. There was discussion that it had 23 Barclays had replaced the Fed's financing and 23 happened, but there was still a lot of

24

25

received the securities that had been pledged to

24

25

the Fed?

reconciliations going on of what securities that

Barclays was getting associated with that

1	Page 30		Page 31
	M. Fazio	1	M. Fazio
2	transaction also.	2	were being transferred on Friday, the 19th or on
3	Q. But with respect to the securities	3	Monday, the 21st.
4	that had already been transferred, did you have	4	I'm sure Monday is the 22nd. I
5	an understanding that this list contained in	5	apologize.
6	Exhibit 461B reflected those securities?	6	Q. So it's your testimony that as of
7	A. No. I had an understanding that	7	today you still do not have a complete list of
8	these were securities earlier in the week, that	8	the securities that Barclays received in
9	thought that Lehman had that they were being	9	connection with its replacement of the Fed. Is
10	transferred over to Barclays as part of the Fed	10	that your testimony?
11	transaction and the whole transaction that was	11	A. The testimony and I think what I just
12	being discussed on court on Friday.	12	said was that we do not have a listing from
13	Q. You did not have an understanding	13	Barclays of all the securities that they have
14	that the securities listed in 461B had already	14	received associated with this transaction and
15	been transferred to Barclays as a part of its	15	the market value of those securities as of the
16	replacement of the Fed?	16	close of the business on the 19th. As of today
17	A. No.	17	we do not have that listing.
18	MS. TAGGART: Asked and answered.	18	Q. Did you ever receive Schedule A to
19	BY MR. STERN:	19	the Clarification Letter?
20	Q. Okay. At some point did you learn	20	MS. TAGGART: Object to form.
21	that?	21	And now you're asking him personally?
22	A. I still to this day do not know or	22	Go ahead.
23	have a detailed list from Barclays or the estate	23	A. Sorry. Repeat the question. I'm
24	of the exact securities transferred as of today	24	sorry.
25	and the market values of those securities that	25	Q. Did you ever receive Schedule A to
	Page 32		Page 33
1	M. Fazio	1	M. Fazio
2	the Clarification Letter?	2	BY MR. STERN:
3	A. I have received what has been	3	Q. Focusing again on the second page of
4	indicated to be Schedule A of the Clarification	4	Exhibit 461B, it lists a total amount there of
5	Letter, yes.	5	\$49.9 billion.
6	Q. Have you received Annex A to the	6	Do you see that?
7	settlement between LBI, JPMorgan and Barclays	7	A. Yes, I do.
8	MS. TAGGART: Object to form.	8	Q. At some point over the preclosing
9	BY MR. STERN:	9	weekend did you learn the amount of the
	Q concerning the \$7 billion	10	financing that Barclays had assumed in replacing
10	_		maneing that Barelays had assumed in replacing
10 11	shortfall?	11	the Fed, the loan amount that is?
	shortfall? A. I would have to look at it to see	11 12	
11			the Fed, the loan amount that is?
11 12 13 14	A. I would have to look at it to see	12 13 14	the Fed, the loan amount that is? A. I was told that it was \$45.5 billion,
11 12 13	A. I would have to look at it to see what annex A is, but I might have seen it but	12 13 14 15	the Fed, the loan amount that is? A. I was told that it was \$45.5 billion, yes.
11 12 13 14	 A. I would have to look at it to see what annex A is, but I might have seen it but I'd have to see it in front of me. Q. Okay. MS. TAGGART: Jack, can we take a 	12 13 14 15 16	the Fed, the loan amount that is? A. I was told that it was \$45.5 billion, yes. Q. And over that preclosing weekend, did
11 12 13 14 15	A. I would have to look at it to see what annex A is, but I might have seen it but I'd have to see it in front of me.Q. Okay.	12 13 14 15 16 17	the Fed, the loan amount that is? A. I was told that it was \$45.5 billion, yes. Q. And over that preclosing weekend, did you raise any questions concerning the
11 12 13 14 15 16 17	 A. I would have to look at it to see what annex A is, but I might have seen it but I'd have to see it in front of me. Q. Okay. MS. TAGGART: Jack, can we take a 	12 13 14 15 16 17	the Fed, the loan amount that is? A. I was told that it was \$45.5 billion, yes. Q. And over that preclosing weekend, did you raise any questions concerning the difference between that \$45 billion amount and this \$49.9 billion amount? A. Yes.
11 12 13 14 15 16 17 18	A. I would have to look at it to see what annex A is, but I might have seen it but I'd have to see it in front of me.Q. Okay.MS. TAGGART: Jack, can we take a quick break?	12 13 14 15 16 17 18	the Fed, the loan amount that is? A. I was told that it was \$45.5 billion, yes. Q. And over that preclosing weekend, did you raise any questions concerning the difference between that \$45 billion amount and this \$49.9 billion amount?
11 12 13 14 15 16 17 18 19 20	A. I would have to look at it to see what annex A is, but I might have seen it but I'd have to see it in front of me. Q. Okay. MS. TAGGART: Jack, can we take a quick break? MR. STERN: Sure. MS. TAGGART: I'll just be a couple minutes.	12 13 14 15 16 17 18 19 20	the Fed, the loan amount that is? A. I was told that it was \$45.5 billion, yes. Q. And over that preclosing weekend, did you raise any questions concerning the difference between that \$45 billion amount and this \$49.9 billion amount? A. Yes. Q. With whom did you raise those questions?
11 12 13 14 15 16 17 18 19 20	A. I would have to look at it to see what annex A is, but I might have seen it but I'd have to see it in front of me. Q. Okay. MS. TAGGART: Jack, can we take a quick break? MR. STERN: Sure. MS. TAGGART: I'll just be a couple minutes. THE VIDEOGRAPHER: The time is 10:04	12 13 14 15 16 17 18 19 20	the Fed, the loan amount that is? A. I was told that it was \$45.5 billion, yes. Q. And over that preclosing weekend, did you raise any questions concerning the difference between that \$45 billion amount and this \$49.9 billion amount? A. Yes. Q. With whom did you raise those questions? A. I had discussions Jim Seery and
11 12 13 14 15 16 17 18 19 20 21	A. I would have to look at it to see what annex A is, but I might have seen it but I'd have to see it in front of me. Q. Okay. MS. TAGGART: Jack, can we take a quick break? MR. STERN: Sure. MS. TAGGART: I'll just be a couple minutes. THE VIDEOGRAPHER: The time is 10:04 a.m. We're going off the record.	12 13 14 15 16 17 18 19 20 21 22	the Fed, the loan amount that is? A. I was told that it was \$45.5 billion, yes. Q. And over that preclosing weekend, did you raise any questions concerning the difference between that \$45 billion amount and this \$49.9 billion amount? A. Yes. Q. With whom did you raise those questions? A. I had discussions Jim Seery and discussions with Mr. Klein.
11 12 13 14 15 16 17 18 19 20 21 22 23	A. I would have to look at it to see what annex A is, but I might have seen it but I'd have to see it in front of me. Q. Okay. MS. TAGGART: Jack, can we take a quick break? MR. STERN: Sure. MS. TAGGART: I'll just be a couple minutes. THE VIDEOGRAPHER: The time is 10:04 a.m. We're going off the record. (Recess is taken.)	12 13 14 15 16 17 18 19 20 21 22 23	the Fed, the loan amount that is? A. I was told that it was \$45.5 billion, yes. Q. And over that preclosing weekend, did you raise any questions concerning the difference between that \$45 billion amount and this \$49.9 billion amount? A. Yes. Q. With whom did you raise those questions? A. I had discussions Jim Seery and discussions with Mr. Klein. Q. And what did you discuss on that
11 12 13 14 15 16 17 18 19 20 21	A. I would have to look at it to see what annex A is, but I might have seen it but I'd have to see it in front of me. Q. Okay. MS. TAGGART: Jack, can we take a quick break? MR. STERN: Sure. MS. TAGGART: I'll just be a couple minutes. THE VIDEOGRAPHER: The time is 10:04 a.m. We're going off the record.	12 13 14 15 16 17 18 19 20 21 22	the Fed, the loan amount that is? A. I was told that it was \$45.5 billion, yes. Q. And over that preclosing weekend, did you raise any questions concerning the difference between that \$45 billion amount and this \$49.9 billion amount? A. Yes. Q. With whom did you raise those questions? A. I had discussions Jim Seery and discussions with Mr. Klein.

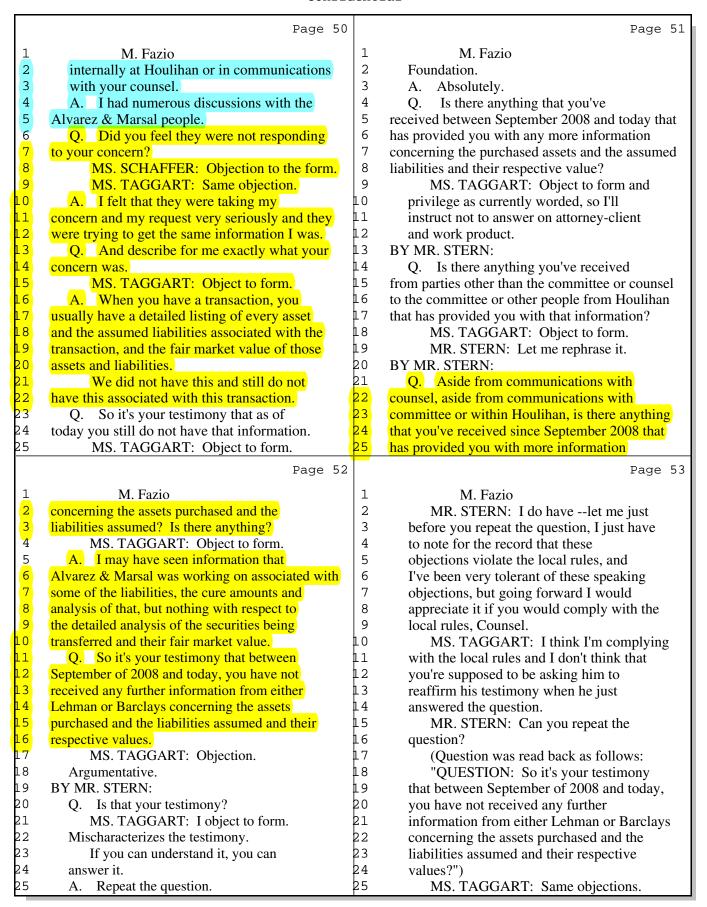
	Page 34		Page 35
1	M. Fazio	1	M. Fazio
2	listing of the collateral that was being	2	securities being transferred associated with the
3	transferred associated with the transaction and	3	transaction. It was more of a discussion of the
4	the market values associated with the securities	4	assets being transferred as opposed to the
5	being transferred.	5	\$47.7 billion of securities that were supposed
6	Q. What types of withdrawn.	6	to be transferred as part of the transaction.
7	What market values did you want?	7	Q. My question focuses on the
8	A. I wanted the closing market values as	8	\$49.9 billion figure that is listed on
9	of September 19th.	9	Exhibit 461B.
10	Q. From Lehman?	10	Did you have any discussion with
11	A. Yes.	11	Mr. Seery concerning the difference between that
12	Q. And did you ever discuss with	12	amount and the \$45 billion amount of the loan?
13	Mr. Seery any concern about a \$5 billion	13	MS. TAGGART: Object to form. Asked
14	mismatch or difference between the \$49.9 billion	14	and answered.
15	figure on Exhibit 461B and the \$45 billion	15	A. We had discussions about the assets
16	amount of the loan?	16	being transferred, the liabilities being assumed
17	MS. TAGGART: Object to form.	17	as part of the transaction, yes.
18	THE WITNESS: Repeat the question?	18	Q. And were you able, was Houlihan able,
19	(Question was read back as follows:	19	based on the information it had available to it,
20	"QUESTION: And did you ever discuss	20	to come to any assessment of the fair value of
21	with Mr. Seery any concern about a	21	the securities that were listed on Exhibit 461B?
22	\$5 billion mismatch or difference between	22	MS. TAGGART: You can answer that yes
23	the \$49.9 billion figure on Exhibit 461B	23	or no or I don't know.
24	and the \$45 billion amount of the loan?")	24	A. No.
25	A. We discussed the fair value of the	25	Q. And is that because public pricing
	Page 36		Page 37
1	Page 36 M. Fazio	1	Page 37 M. Fazio
2	M. Fazio information was not available concerning many of	2	
	M. Fazio		M. Fazio
2	M. Fazio information was not available concerning many of	2	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes.
2 3 4 5	M. Fazio information was not available concerning many of the securities listed?	2 3 4 5	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of
2 3 4 5 6	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege.	2 3 4 5 6	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was?
2 3 4 5 6 7	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN:	2 3 4 5 6 7	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form.
2 3 4 5 6 7 8	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this	2 3 4 5 6 7 8	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN:
2 3 4 5 6 7 8	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions	2 3 4 5 6 7 8 9	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to
2 3 4 5 6 7 8 9	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery?	2 3 4 5 6 7 8 9	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be.
2 3 4 5 6 7 8 9 10	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery? A. I believe it was on Sunday. I don't	2 3 4 5 6 7 8 9 10	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be. MS. TAGGART: Same objection.
2 3 4 5 6 7 8 9 10 11	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery? A. I believe it was on Sunday. I don't have a time.	2 3 4 5 6 7 8 9 10 11	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be. MS. TAGGART: Same objection. A. Schedule A was and Schedule B were to
2 3 4 5 6 7 8 9 10 11 12	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery? A. I believe it was on Sunday. I don't have a time. Q. Let me show you a document that we've	2 3 4 5 6 7 8 9 10 11 12 13	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be. MS. TAGGART: Same objection. A. Schedule A was and Schedule B were to represent securities being transferred to
2 3 4 5 6 7 8 9 10 11 12 13 14	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery? A. I believe it was on Sunday. I don't have a time. Q. Let me show you a document that we've previously marked as Exhibit 460B.	2 3 4 5 6 7 8 9 10 11 12 13 14	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be. MS. TAGGART: Same objection. A. Schedule A was and Schedule B were to represent securities being transferred to Barclays as part of the sale.
2 3 4 5 6 7 8 9 10 11 12 13 14 15	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery? A. I believe it was on Sunday. I don't have a time. Q. Let me show you a document that we've previously marked as Exhibit 460B. MR. STERN: We do not have many	2 3 4 5 6 7 8 9 10 11 12 13 14 15	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be. MS. TAGGART: Same objection. A. Schedule A was and Schedule B were to represent securities being transferred to Barclays as part of the sale. Q. And did Houlihan do any further
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery? A. I believe it was on Sunday. I don't have a time. Q. Let me show you a document that we've previously marked as Exhibit 460B. MR. STERN: We do not have many copies of this given the size but	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be. MS. TAGGART: Same objection. A. Schedule A was and Schedule B were to represent securities being transferred to Barclays as part of the sale. Q. And did Houlihan do any further review of Schedule A and Schedule B after the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery? A. I believe it was on Sunday. I don't have a time. Q. Let me show you a document that we've previously marked as Exhibit 460B. MR. STERN: We do not have many copies of this given the size but (Document review.)	2 3 4 5 6 7 8 9 10 11 12 13 14 15 6 7	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be. MS. TAGGART: Same objection. A. Schedule A was and Schedule B were to represent securities being transferred to Barclays as part of the sale. Q. And did Houlihan do any further review of Schedule A and Schedule B after the closing?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery? A. I believe it was on Sunday. I don't have a time. Q. Let me show you a document that we've previously marked as Exhibit 460B. MR. STERN: We do not have many copies of this given the size but (Document review.) BY MR. STERN:	2 3 4 5 6 7 8 9 10 11 2 13 14 15 16 17 18	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be. MS. TAGGART: Same objection. A. Schedule A was and Schedule B were to represent securities being transferred to Barclays as part of the sale. Q. And did Houlihan do any further review of Schedule A and Schedule B after the closing? MS. TAGGART: I'm going to object and
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery? A. I believe it was on Sunday. I don't have a time. Q. Let me show you a document that we've previously marked as Exhibit 460B. MR. STERN: We do not have many copies of this given the size but (Document review.) BY MR. STERN: Q. This appears to be an email from	2 3 4 5 6 7 8 9 10 11 2 13 14 15 16 17 18 19	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be. MS. TAGGART: Same objection. A. Schedule A was and Schedule B were to represent securities being transferred to Barclays as part of the sale. Q. And did Houlihan do any further review of Schedule A and Schedule B after the closing? MS. TAGGART: I'm going to object and instruct not to answer on privilege.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery? A. I believe it was on Sunday. I don't have a time. Q. Let me show you a document that we've previously marked as Exhibit 460B. MR. STERN: We do not have many copies of this given the size but (Document review.) BY MR. STERN: Q. This appears to be an email from David Murgio at Weil, Gotshal to Bob Moore at	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be. MS. TAGGART: Same objection. A. Schedule A was and Schedule B were to represent securities being transferred to Barclays as part of the sale. Q. And did Houlihan do any further review of Schedule A and Schedule B after the closing? MS. TAGGART: I'm going to object and instruct not to answer on privilege. BY MR. STERN:
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery? A. I believe it was on Sunday. I don't have a time. Q. Let me show you a document that we've previously marked as Exhibit 460B. MR. STERN: We do not have many copies of this given the size but (Document review.) BY MR. STERN: Q. This appears to be an email from David Murgio at Weil, Gotshal to Bob Moore at Milbank, and it attaches two documents, two	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be. MS. TAGGART: Same objection. A. Schedule A was and Schedule B were to represent securities being transferred to Barclays as part of the sale. Q. And did Houlihan do any further review of Schedule A and Schedule B after the closing? MS. TAGGART: I'm going to object and instruct not to answer on privilege. BY MR. STERN: Q. After the closing, did Houlihan have
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery? A. I believe it was on Sunday. I don't have a time. Q. Let me show you a document that we've previously marked as Exhibit 460B. MR. STERN: We do not have many copies of this given the size but (Document review.) BY MR. STERN: Q. This appears to be an email from David Murgio at Weil, Gotshal to Bob Moore at Milbank, and it attaches two documents, two Excel spreadsheets; one labeled "Schedule A" and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be. MS. TAGGART: Same objection. A. Schedule A was and Schedule B were to represent securities being transferred to Barclays as part of the sale. Q. And did Houlihan do any further review of Schedule A and Schedule B after the closing? MS. TAGGART: I'm going to object and instruct not to answer on privilege. BY MR. STERN: Q. After the closing, did Houlihan have any discussions with anyone representing Lehman
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery? A. I believe it was on Sunday. I don't have a time. Q. Let me show you a document that we've previously marked as Exhibit 460B. MR. STERN: We do not have many copies of this given the size but (Document review.) BY MR. STERN: Q. This appears to be an email from David Murgio at Weil, Gotshal to Bob Moore at Milbank, and it attaches two documents, two Excel spreadsheets; one labeled "Schedule A" and one labeled "Schedule B."	2 3 4 5 6 7 8 9 10 11 12 13 14 15 6 17 18 9 20 21 22 23	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be. MS. TAGGART: Same objection. A. Schedule A was and Schedule B were to represent securities being transferred to Barclays as part of the sale. Q. And did Houlihan do any further review of Schedule A and Schedule B after the closing? MS. TAGGART: I'm going to object and instruct not to answer on privilege. BY MR. STERN: Q. After the closing, did Houlihan have any discussions with anyone representing Lehman or Barclays concerning the identity or value of
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 22	M. Fazio information was not available concerning many of the securities listed? MS. TAGGART: I'm going to object and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Approximately when over this preclosing weekend did you have your discussions with Mr. Seery? A. I believe it was on Sunday. I don't have a time. Q. Let me show you a document that we've previously marked as Exhibit 460B. MR. STERN: We do not have many copies of this given the size but (Document review.) BY MR. STERN: Q. This appears to be an email from David Murgio at Weil, Gotshal to Bob Moore at Milbank, and it attaches two documents, two Excel spreadsheets; one labeled "Schedule A" and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	M. Fazio was a Schedule A listing certain securities and a Schedule B listing certain securities? A. Yes. Q. And what was your understanding of what Schedule A was? MS. TAGGART: Object to form. BY MR. STERN: Q. Or what Schedule A was intended to be. MS. TAGGART: Same objection. A. Schedule A was and Schedule B were to represent securities being transferred to Barclays as part of the sale. Q. And did Houlihan do any further review of Schedule A and Schedule B after the closing? MS. TAGGART: I'm going to object and instruct not to answer on privilege. BY MR. STERN: Q. After the closing, did Houlihan have any discussions with anyone representing Lehman

	Page 38		Page 39
1	M. Fazio	1	M. Fazio
2	A. Yes.	2	A. We raised concerns of not having a
3	Q. When was the first such discussion	3	detailed list of the securities or the market
4	with representatives of Lehman?	4	values associated with that transaction.
5	A. I don't have an exact recollection,	5	Q. Did Houlihan do anything to itself
6	but it would have been in the week or following	6	evaluate the value of the securities on the
7	that week, so it would have been the week of	7	Schedule A listing that Houlihan did have at
8	September 22nd or September 29th.	8	that time?
9	Q. And what was the substance of those	9	MS. TAGGART: I'm going to object and
10	discussions with Lehman representatives?	10	instruct not to answer on work product and
11	A. The substance of those discussions	11	attorney-client privilege.
12	were to attempt to get a detailed listing of the	12	BY MR. STERN:
13	securities being transferred associated with the	13	Q. After the closing, did you
14	transaction, as well as the market values as of	14	participate in any discussions with Weil,
15 16	the closing date.	15 16	Gotshal concerning the value of the securities
17	Q. And with whom did you have those discussions?	17	transferred to Barclays as a part of the Fed replacement?
18	A. We had discussions with Paolo	18	•
19	Tonucci. We had discussions with the A&M	19	MS. TAGGART: Object to form. You can answer.
20	representatives throughout the following	20	A. I do not believe so.
21	two weeks.	21	Q. Do you know whether anyone else from
22	Q. And did Houlihan in those discussions	22	Houlihan did?
23	express any concerns relating to the value of	23	MS. TAGGART: Object to form.
24	the securities on Schedule A?	24	Foundation.
25	MS. TAGGART: Object to form.	25	A. I do not know.
	Page 40		Page 41
1	M. Fazio	1	M. Fazio
2	Q. Do you know whether after the closing	2	specific dates.
3	Houlihan had any discussions with anyone acting	3	Q. And in those discussions with
4	on behalf of Lehman concerning the difference	4	Alvarez, did Houlihan raise any concern about a
5	between the repo loan amount and the value of	5	\$5 billion mismatch between the amount of the
6	the securities listed on the Schedule A?	6	repo loan, \$45 billion, and the market value
7	MS. TAGGART: Object to form.	7	listed in Exhibit 461B of \$49.9 billion?
8	A. We had numerous conversations with	8	MS. TAGGART: Object to form.
9	the Alvarez & Marsal people with respect to the	9	A. We raised questions as to which
10	value of the securities and the identification	10	securities and the value of those securities
11	of those securities that were being transferred	11	that were being transferred associated with the
12	as part of the transaction.	12	transaction.
13	Q. And your best recollection is that	13	Q. Did you raise any concerns relating
14	those discussions with Alvarez took place	14	to the difference between the loan amount and
15	sometime after the closing?	15 16	the value of the securities that were
16 17	A. Yes.Q. And that would have been the week of	17	transferred in connection with that reporeplacement?
18	September 22nd or the week of September 29th?	18	MS. TAGGART: Object to form.
19	A. Yes.	19	A. We were concerned with the value of
20	Q. Do you have any recollection one way	20	all the securities that were being transferred,
21	or the other concerning whether those	21	as well as the loan that was being assumed as
22	discussions began the week of September 22nd or	22	part of this transaction, yes.
23	the week of September 29th?	23	Q. And at that point in time after the
24	A. I believe they would have began the	24	closing, did Houlihan do anything to access
25	week of September 22nd, but I don't have	25	publicly available information from Bloomberg or

1 M. Fazio 2 other sources concerning the value of the 3 securities on the list that you had at that 4 time? 5 MS. TAGGART: I'm going to object and 1 M. Fazio 2 reviewed them and cannot ever 3 amount which was announced a was \$47.4 billion. And there is discrepancy on the liability side	
2 other sources concerning the value of the 3 securities on the list that you had at that 4 time? 5 MS. TAGGART: I'm going to object and 2 reviewed them and cannot ever amount which was announced was \$47.4 billion. And there is discrepancy on the liability side.	
3 securities on the list that you had at that 4 time? 5 MS. TAGGART: I'm going to object and 3 amount which was announced was \$47.4 billion. And there is discrepancy on the liability side.	come close to the
4 time? 5 MS. TAGGART: I'm going to object and 4 was \$47.4 billion. And there is discrepancy on the liability side	
5 MS. TAGGART: I'm going to object and 5 discrepancy on the liability side	
6 applied to a provide a maintaile and the second by applied to a provide a	
6 instruct not to answer on privilege. 7 BY MR. STERN: 6 could be much smaller than the asset side. Houlihan's review v	
Q. Let me show you a document that's that the securities transferred co	
9 previously been marked as Exhibit 504. 9 billions more than the \$47.4 bil	
Do you recognize this series of very well be a logical explanation very well be a logical explanation.	
emails? this, which is why the first mee	eting is just to
12 A. Yes. 12 explore the issues."	
Q. And what are they? You see that Mr. Despin	
A. They are emails to and from Luc "Houlihan has reviewed them a	
Despins associated with request for information 25 close to the amount which was	announced in
16 from Lori Fife at Weil, Gotshal. 16 court."	
Q. Looking at the first page of this What analysis had Houle	
exhibit at the bottom, there is an email from led Mr. Despins to make that co	
Mr. Despins to Lori Fife copying you and MS. TAGGART: I'm go	
Mr. Geer and Mr. Bell, and he writes, "Lori, 20 instruct not to answer on att	-
21 this is not in connection with sealing motion, 21 and work product privilege.	
22 although I want to know more about the schedules 22 BY MR. STERN:	
before that issue is up before the court, but Q. Mr. Despins tells Weil,	
rather our concern is with respect to the Houlihan had done an analysis	of the securities.
securities which were transferred. Houlihan has 25 Do you see that?	
Page 44	Page 45
1 M. Fazio 1 M. Fazio	
2 A. Yes. 2 reflected in writing?	
Q. What analysis had Houlihan done? 3 MS. TAGGART: You	a can answer yes or
4 MS. TAGGART: Same objection and 4 no.	
5 instruction. 5 A. We would have had w	written material
6 BY MR. STERN: 6 associated with our work.	
7 Q. What figure for market value had 7 Q. And that written mate	erial, according
	-
8 Houlihan arrived at as a result of its analysis? 8 to Mr. Despins, would indica	
9 MS. TAGGART: I'm going to object and 9 securities transferred could be	e worth officials
9 MS. TAGGART: I'm going to object and 10 instruct not to answer on privilege. 10 more than the \$47.4 billion; in the BY MR. STERN: 11 MS. TAGGART: I'm	s that right?
9 MS. TAGGART: I'm going to object and 10 instruct not to answer on privilege. 10 securities transferred could be more than the \$47.4 billion; i	s that right? going to object and
9 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 10 instruct not to answer on privilege. 11 BY MR. STERN: 12 Q. Mr. Despins writes, "Houlihan's review would indicate that the securities recurrence of the securities recurrence could be more than the \$47.4 billion; in the securities recurrence of the secur	s that right? going to object and
9 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 10 BY MR. STERN: 11 Q. Mr. Despins writes, "Houlihan's review would indicate that the securities transferred could be worth billions more than the \$47.4 billion; instruct not to answer on privilege. 10 more than the \$47.4 billion; instruct not to answer on privilege. 11 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 12 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 13 BY MR. STERN: 14 Transferred could be worth billions more than 19 more than 10 more than 11 more than 12 more than 13 more than 14 more than	s that right? going to object and orivilege.
9 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 10 BY MR. STERN: 11 Q. Mr. Despins writes, "Houlihan's review would indicate that the securities 13 BY MR. STERN: 12 BY MR. STERN: 13 securities transferred could be more than the \$47.4 billion; instruct not to answer on privilege. 14 MS. TAGGART: I'm instruct not to answer on privilege. 15 MS. TAGGART: I'm going to object and instruct to answer on privilege. 16 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 17 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 18 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 19 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 10 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 11 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 12 MS. TAGGART: I'm going to object and instruct not to answer on privilege.	s that right? going to object and orivilege.
9 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 10 BY MR. STERN: 11 Q. Mr. Despins writes, "Houlihan's review would indicate that the securities transferred could be worth billions more than 14 securities transferred could be worth billions more than 15 securities transferred could be more than 16 more than 17 more than 18 more than 19 securities transferred could be more than 10 more than 11 more than 11 more than 11 more than 12 more than 13 more than 14 more than 14 more than 14 more than 15 more than 16 more than 16 more than 16 more than 17 more than 17 more than 17 more than 17 more than 18 more than	s that right? going to object and privilege. of emails, was
9 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 10 BY MR. STERN: 11 Q. Mr. Despins writes, "Houlihan's review would indicate that the securities transferred could be worth billions more than the \$47.4 billion; instruct not to answer on privilege. 10 more than the \$47.4 billion; instruct not to answer on privilege. 11 MS. TAGGART: I'm more than instruct not to answer on privilege. 12 more than the \$47.4 billion; instruct not to answer on privilege. 13 BY MR. STERN: 14 transferred could be worth billions more than the \$47.4 billion; instruct not to answer on privilege. 15 the \$47.4 billion."	s that right? going to object and privilege. of emails, was ect to form.
9 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 10 BY MR. STERN: 11 Q. Mr. Despins writes, "Houlihan's review would indicate that the securities transferred could be worth billions more than the \$47.4 billion." 13 review would indicate that the securities transferred could be worth billions more than the \$47.4 billion." 14 transferred could be worth billions more than the \$47.4 billion. BY MS. TAGGART: I'm instruct not to answer on provided the securities transferred could be more than the \$47.4 billion; instruct not to answer on provided the securities transferred could be more than the \$47.4 billion; instruct not to answer on provided to answer	s that right? going to object and orivilege. of emails, was ect to form. o meetings
9 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 10 BY MR. STERN: 11 Q. Mr. Despins writes, "Houlihan's review would indicate that the securities transferred could be worth billions more than the \$47.4 billion." 14 transferred could be worth billions more than the \$47.4 billion." 15 Do you see that? 16 A. Yes, I do. 17 A. Yes, I do. 18 Q. Do you recall how many billions more Houlihan's review indicated at the time? 19 securities transferred could be more than the \$47.4 billion; instruct not to answer on provided instruct not to answer on provi	s that right? going to object and orivilege. of emails, was ect to form. o meetings and I'll see,
9 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 10 BY MR. STERN: 11 Q. Mr. Despins writes, "Houlihan's review would indicate that the securities transferred could be worth billions more than the \$47.4 billion; instruct not to answer on privilege. 12 MS. TAGGART: I'm MS. TAGGART: I'm instruct not to answer on privilege. 13 review would indicate that the securities transferred could be worth billions more than the \$47.4 billion; instruct not to answer on privilege. 14 transferred could be worth billions more than the \$47.4 billion; instruct not to answer on privilege. 15 Do you see that? 16 Do you see that? 17 A. Yes, I do. 18 Q. Do you recall how many billions more than the \$47.4 billion; instruct not to answer on privilege. 19 MS. TAGGART: Objection instruct not to answer on privilege. 19 MS. TAGGART: Objectio	s that right? going to object and orivilege. of emails, was eet to form. o meetings and I'll see, was always constant
MS. TAGGART: I'm going to object and instruct not to answer on privilege. BY MR. STERN: Q. Mr. Despins writes, "Houlihan's review would indicate that the securities transferred could be worth billions more than the \$47.4 billion; instruct not to answer on privilege. BY MR. STERN: Q. Mr. Despins writes, "Houlihan's review would indicate that the securities transferred could be worth billions more than the \$47.4 billion; instruct not to answer on privilege. BY MR. TAGGART: I'm instruct not to answer on privilege. BY MR. STERN: Q. Following this series there a meeting? MS. TAGGART: Objection And instruct you not to answer on privilege. MS. TAGGART: Objection. And instruct you not to answer on privilege. 10 A. TAGGART: I'm instruct not to answer on privilege. 11 A. Yes, I do. Q. Following this series there a meeting? MS. TAGGART: Objection And instruct you not to answer on privilege. 12 Securities transferred could be more than the \$47.4 billion; instruct not to answer on privilege. 13 BY MR. STERN: Q. Following this series there a meeting? MS. TAGGART: Objection And instruct you not to answer on privilege. 14 MS. TAGGART: Objection And instruct you not to answer on privilege. 15 MS. TAGGART: Objection And instruct you not to answer on privilege. 16 MS. TAGGART: Objection And instruct you not to answer on privilege. 17 MS. TAGGART: Objection And instruct you not to answer on privilege. 18 MS. TAGGART: Objection And instruct you not to answer on privilege. 19 MS. TAGGART: Objection And instruct you not to answer on privilege. 19 MS. TAGGART: Objection And instruct you not to answer on privilege. 10 MS. TAGGART: Objection And instruct you not to answer on privilege. 10 MS. TAGGART: Objection And instruct you not to answer on privilege. 11 MS. TAGGART: Objection And instruct you not to answer on privilege. 12 MS. TAGGART: Objection And instruct you not you have a privilege. 13 MS. TAGGART: Objection And instruct you have a privilege. 14 MS. TAGGART: Objection And instruct	s that right? going to object and orivilege. of emails, was ect to form. o meetings and I'll see, vas always constant and the advisors.
9 MS. TAGGART: I'm going to object and instruct not to answer on privilege. 10 BY MR. STERN: 11 Q. Mr. Despins writes, "Houlihan's review would indicate that the securities transferred could be worth billions more than the \$47.4 billion; instruct not to answer on privilege. 13 review would indicate that the securities transferred could be worth billions more than the \$47.4 billion." 14 transferred could be worth billions more than the \$47.4 billion." 15 Do you see that? 16 A. Yes, I do. 17 A. Yes, I do. 18 Q. Do you recall how many billions more Houlihan's review indicated at the time? 19 MS. TAGGART: Objection. And instruct you not to answer on attorney-client and work product 20 to this specific request concerts.	s that right? going to object and orivilege. of emails, was ect to form. o meetings and I'll see, vas always constant and the advisors. with respect
MS. TAGGART: I'm going to object and instruct not to answer on privilege. BY MR. STERN: Q. Mr. Despins writes, "Houlihan's review would indicate that the securities transferred could be worth billions more than the \$47.4 billion." Lo you see that? A. Yes, I do. Q. Do you recall how many billions more Houlihan's review indicated at the time? MS. TAGGART: Objection. And instruct you not to answer on attorney-client and work product privileges.	s that right? going to object and orivilege. of emails, was ect to form. o meetings and I'll see, vas always constant and the advisors. with respect rning Houlihan's
MS. TAGGART: I'm going to object and instruct not to answer on privilege. BY MR. STERN: Q. Mr. Despins writes, "Houlihan's review would indicate that the securities transferred could be worth billions more than the \$47.4 billion." BY MR. STERN: Q. Mr. Despins writes, "Houlihan's review would indicate that the securities transferred could be worth billions more than the \$47.4 billion." Do you see that? A. Yes, I do. Q. Do you recall how many billions more Houlihan's review indicated at the time? MS. TAGGART: Objection. And instruct you not to answer on attorney-client and work product 9 securities transferred could be more than the \$47.4 billion; instruct not to answer on a proving the securities transferred could be more than the \$47.4 billion; instruct not to answer on a label of the securities transferred could be more than the \$47.4 billion; instruct not to answer on a label of the securities transferred could be more than the \$47.4 billion; instruct not to answer on a label of the securities transferred could be more than the \$47.4 billion; instruct not to answer on a label of the securities transferred could be more than the \$47.4 billion; instruct not to answer on a label of the securities that the securities instruct not to answer on a label of the securities that the securities instruct not to answer on a label of the securities that the securities instruct not to answer on a label of the securities and work product answer on a label of the securities instruct not to answer on a label of the securities instruct not to answer on a label of the securities and securities	s that right? going to object and orivilege. of emails, was ect to form. o meetings and I'll see, vas always constant and the advisors. with respect rning Houlihan's urities

	Page 46		Page 47
1	M. Fazio	1	M. Fazio
2	meeting?	2	Foundation.
3	MS. TAGGART: Object to form and	3	Could you limit that at all by time?
4	foundation.	4	BY MR. STERN:
5	A. I do not believe that between the	5	
6		6	Q. Can you answer?
7	parties that are listed here there was a meeting that was set up with respect to this email	7	THE WITNESS: Can you repeat the question then?
8	chain.	8	MS. TAGGART: Okay. You can answer
9		9	· ·
	Q. Was there a meeting between anyone		yes or no to that.
10	else acting on behalf of the committee or anyone	10	And you can reread the question
11	else acting on behalf of Lehman concerning that	11	again.
12	issue?	12	(Question was read back as follows:
13	MS. TAGGART: Object to form and	13	"QUESTION: Did the estate ever
14	foundation.	14	provide Houlihan with any information that
15	A. We would have meetings with the	15	indicated that the securities transferred
16	estate on a regular basis and this was one of	16	were not worth billions more than the \$47.4
17	the topics we would continually ask them to get	17	billion?")
18	a detailed listing of the securities and the	18	A. To my knowledge, I have never
19	market values as to the close of the business	19	received anything from the estate that has
20	on the 19th.	20	detailed the final securities transferred and
21	Q. Did the estate ever provide Houlihan	21	the market value as of the close of business on
22	with any information that indicated that the	22 23	the 19th.
23	securities transferred were not worth billions	23	Q. Aside from this email request and
24	more than the \$47.4 billion?	24	whatever meetings followed from it, what did
25	MS. TAGGART: Object to form.	25	Houlihan do to address any concern that it had
	Page 48		Page 49
1	M. Fazio	1	M. Fazio
2	as a result of its review indicating that the	2	detailed information associated with the
3	securities transferred could be worth billions	3	transaction.
4	more than \$47.4 billion?	4	Q. I'm not asking what you did not
5	MS. TAGGART: Object to form,	5	receive.
6	foundation and also privilege.	6	I'm asking what did you receive.
7	You should not disclose anything you	7	A. All we had were discussions. I never
8	did either internally with Houlihan or in	8	received any of their work products associated
9	correspondence with your counsel.	9	with any detailed analysis that they may have
10	But if you took any actions that you	10	been doing.
11	know of with anyone other than that, go	11	To the best of my knowledge, they
12	ahead and answer.	12	have not received a final listing either from
1 2		13	anybody associated with the transaction,
13 14	A. I had numerous meetings with the	14	associated with which securities and the fair
15	Alvarez & Marsal people to continually ask to	15	
16	follow up and get information associated with		market value as of the 19th.
17	that catually ware transformed and the fair	16	Q. Did that concern you as of late
	that actually were transferred and the fair	17	September, early October of 2008?
18	value of those on the 19th.	18	MS. TAGGART: Object to form.
19	Q. And what types of information did you	19	A. Yes.
20	receive?	20	Q. What did you do about that concern?
21	A. I received no final listing from	21	MS. TAGGART: Objection. Form,
22	anybody associated with the transaction.	22	foundation. Asked and answered.
23	Q. What types of information did you	23	And I'll make the same privilege
24	receive?	24	instruction. If you have anything to add
25	A. I received no information that had	25	of anything you did besides working

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	Page 54		Page 55
1	M. Fazio	1	M. Fazio
2	But you can answer.	2	objection and instruction.
3	A. To date I have not received from	3	BY MR. STERN:
4	anyone a detailed listing that Barclays and	4	Q. Going back to your meetings with
5	Lehman, the estate, have said these are the	5	Alvarez after the closing, do you recall Alvarez
6	final securities and these are their fair market	6	providing Houlihan with any information
7	value off of the Lehman systems as of	7	concerning the Barclays replacement of the Fed
8	September 19th, 2008, that's correct.	8	repo?
9	Q. Between 2008 and today, have you	9	A. I'm not sure if they've given us
10		10	anything with respect to the Fed repo
11	<i>y</i>	11	specifically.
12	\mathcal{E}	12	We have talked about and discussed
13	the assumed liabilities and their respective	13	the whole transaction and trying to get a whole
14		13 14	accounting for the entire transaction.
15		15	
16	MS. TAGGART: I'm going to object and	16	Q. After the closing when you met with
17	3	17	Alvarez, did FTI participate in some of those
18	1 1 2 7 1 3	/ 18	meetings?
			A. They would have been party to some of
19		19	those meetings.
20		20 21	Q. Let's take a look at what has
21			previously been marked as Exhibit 463B.
22		22	Is this a document that you've seen
23		23	before?
24 25		24	A. Yes, I have.
25	MS. TAGGART: I'll stand by my	25	Q. And when did you first see this
	Page 56		Page 57
1	M. Fazio	1	M. Fazio
2	M. Fazio document?	2	M. Fazio A. I would have looked at it, yes.
2 3	M. Fazio document? A. I would have seen it sometime in	2 3	M. FazioA. I would have looked at it, yes.Q. And specifically the third page of
2 3 4	M. Fazio document? A. I would have seen it sometime in October of 2008.	2 3 4	M. Fazio A. I would have looked at it, yes. Q. And specifically the third page of the document, the third page of this exhibit,
2 3 4 5	M. Fazio document? A. I would have seen it sometime in October of 2008. Q. And skipping the first two pages and	2 3 4 5	M. Fazio A. I would have looked at it, yes. Q. And specifically the third page of the document, the third page of this exhibit, which has a column for "Assets" and a column for
2 3 4 5 6	M. Fazio document? A. I would have seen it sometime in October of 2008. Q. And skipping the first two pages and looking at the remainder of the document, do you	2 3 4 5 6	M. Fazio A. I would have looked at it, yes. Q. And specifically the third page of the document, the third page of this exhibit, which has a column for "Assets" and a column for "Liabilities," do you see that?
2 3 4 5	M. Fazio document? A. I would have seen it sometime in October of 2008. Q. And skipping the first two pages and looking at the remainder of the document, do you know what that material is?	2 3 4 5	M. Fazio A. I would have looked at it, yes. Q. And specifically the third page of the document, the third page of this exhibit, which has a column for "Assets" and a column for "Liabilities," do you see that? A. Yes.
2 3 4 5 6 7 8	M. Fazio document? A. I would have seen it sometime in October of 2008. Q. And skipping the first two pages and looking at the remainder of the document, do you know what that material is? A. It's a summary from Conor Tully,	2 3 4 5 6 7 8	M. Fazio A. I would have looked at it, yes. Q. And specifically the third page of the document, the third page of this exhibit, which has a column for "Assets" and a column for "Liabilities," do you see that? A. Yes. Q. Do you recall whether you looked at
2 3 4 5 6 7 8 9	M. Fazio document? A. I would have seen it sometime in October of 2008. Q. And skipping the first two pages and looking at the remainder of the document, do you know what that material is? A. It's a summary from Conor Tully, associated with the transaction.	2 3 4 5 6 7 8 9	M. Fazio A. I would have looked at it, yes. Q. And specifically the third page of the document, the third page of this exhibit, which has a column for "Assets" and a column for "Liabilities," do you see that? A. Yes. Q. Do you recall whether you looked at this at the time?
2 3 4 5 6 7 8 9	M. Fazio document? A. I would have seen it sometime in October of 2008. Q. And skipping the first two pages and looking at the remainder of the document, do you know what that material is? A. It's a summary from Conor Tully, associated with the transaction. Q. Looking at the third page of this	2 3 4 5 6 7 8 9	M. Fazio A. I would have looked at it, yes. Q. And specifically the third page of the document, the third page of this exhibit, which has a column for "Assets" and a column for "Liabilities," do you see that? A. Yes. Q. Do you recall whether you looked at this at the time? A. Yes.
2 3 4 5 6 7 8 9 10	M. Fazio document? A. I would have seen it sometime in October of 2008. Q. And skipping the first two pages and looking at the remainder of the document, do you know what that material is? A. It's a summary from Conor Tully, associated with the transaction. Q. Looking at the third page of this exhibit, you see at the bottom it says "Alvarez	2 3 4 5 6 7 8 9 10	M. Fazio A. I would have looked at it, yes. Q. And specifically the third page of the document, the third page of this exhibit, which has a column for "Assets" and a column for "Liabilities," do you see that? A. Yes. Q. Do you recall whether you looked at this at the time? A. Yes. Q. You did.
2 3 4 5 6 7 8 9 10 11 12	M. Fazio document? A. I would have seen it sometime in October of 2008. Q. And skipping the first two pages and looking at the remainder of the document, do you know what that material is? A. It's a summary from Conor Tully, associated with the transaction. Q. Looking at the third page of this exhibit, you see at the bottom it says "Alvarez & Marsal," on the bottom left?	2 3 4 5 6 7 8 9 10 11	M. Fazio A. I would have looked at it, yes. Q. And specifically the third page of the document, the third page of this exhibit, which has a column for "Assets" and a column for "Liabilities," do you see that? A. Yes. Q. Do you recall whether you looked at this at the time? A. Yes. Q. You did. A. Yes.
2 3 4 5 6 7 8 9 10 11 12 13	M. Fazio document? A. I would have seen it sometime in October of 2008. Q. And skipping the first two pages and looking at the remainder of the document, do you know what that material is? A. It's a summary from Conor Tully, associated with the transaction. Q. Looking at the third page of this exhibit, you see at the bottom it says "Alvarez & Marsal," on the bottom left? A. Yes.	2 3 4 5 6 7 8 9 10 11 12 13	M. Fazio A. I would have looked at it, yes. Q. And specifically the third page of the document, the third page of this exhibit, which has a column for "Assets" and a column for "Liabilities," do you see that? A. Yes. Q. Do you recall whether you looked at this at the time? A. Yes. Q. You did. A. Yes. Q. You did. A. Yes. Q. It has a line under the "Assets"
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	M. Fazio document? A. I would have seen it sometime in October of 2008. Q. And skipping the first two pages and looking at the remainder of the document, do you know what that material is? A. It's a summary from Conor Tully, associated with the transaction. Q. Looking at the third page of this exhibit, you see at the bottom it says "Alvarez & Marsal," on the bottom left? A. Yes. Q. And then to the right it says "Draft Barclays Deal Recap"? A. Yes. Q. Do you know whether this summary was prepared by Alvarez? A. I do not know. Q. Looking at this page, do you know when you first received this? A. I would have received or looked at this sometime in October of 2008. Q. And when you received this, did you	2 3 4 5 6 7 8 9 10 11 11 12 13 14 14 15 16 17 18 18 19 19 19 19 19 19 19 19 19 19	M. Fazio A. I would have looked at it, yes. Q. And specifically the third page of the document, the third page of this exhibit, which has a column for "Assets" and a column for "Liabilities," do you see that? A. Yes. Q. Do you recall whether you looked at this at the time? A. Yes. Q. You did. A. Yes. Q. It has a line under the "Assets" column that's labeled "Negotiated Mark Haircut." Do you see that? A. Yes, I do. Q. What was your understanding of that line at the time? A. My understanding and further confirmed is that there was a detailed listing of assets that were going to be transferred. The company had a detailed listing which we had seen previously at the time of the closing which

	Page 58		Page 59
1	M. Fazio	1	M. Fazio
2	the beginning of the week, was substantially	2	A. The discussion was very similar
3	over the market value at the end of the week,	3	consistently throughout this, which we need a
4	and that \$5 billion is a number that was an	4	detail of assets and a detail of the market
5	approximate number of what they believed the	5	values associated with the transaction, and the
6	market value had declined between the beginning	6	value of those securities on the 19th of
7	of the week and the end of the week associated	7	September.
8	with the assets.	8	Q. And what did Alvarez tell you
9	Q. And who was the "they" that you just	9	concerning this line "Negotiated Mark Haircut"?
10	referred to?	10	A. They did not have a detail of the
11	A. Jim Seery and Mr. Klein, and I would	11	assets and did not have a detail of the assets
12	imagine the other people that were working with	12	or the detail of the market values as of the
13	Mr. Seery and Mr. Klein.	13	19th.
14	Q. And when you received this page that	14	Q. Under that it says, "Assets
15	refers to the negotiated mark haircut, did you	15	transferred under repo stale marks."
16	have any discussion with Alvarez concerning that	16	What was your understanding of the
17	line?	17	term "stale marks" when you received this?
18	A. Absolutely. I've had discussions	18	A. Stale marks referred to the marks
19	with Alvarez in September and October associated	19	that were done at the beginning of the week
20	with getting a detailed listing of the assets	20	associated with the transaction, so it would
21	and the market value as of the close of business	21	have been the Monday or Tuesday of that week
22	on the 19th.	22	where the marks were done.
23	Q. And what specifically did you discuss	23	Q. And did you discuss with Alvarez
24	with Alvarez concerning the negotiated mark	24	after the closing, the issue of whether the
25	haircut of \$5 billion?	25	marks were stale?
	Page 60		Page 61
1	M. Fazio	1	M. Fazio
2	MS. SCHAFFER: Objection to form.	2	MS. TAGGART: Object to form and
3	A. Yes, I did. I indicated, and I think	3	foundation.
4	I've answered many times, that we have asked	4	A. That's correct.
5	them to get the updated marks associated with	5	Q. Did you ever find out whether Lehman,
6	the securities that were transferred.	6	that is, LBI, had updated its marks from
7	Q. And what did they tell you about	7	September 12th, 2008, to September 19th, 2008?
8	their ability to get updated marks from Lehman?	8	MS. TAGGART: Object to form and
9	A. They did not have the systems. The	9	foundation and potentially privileged.
10	systems had been transferred to Barclays and	10	You should disclose any information,
11	Barclays had not given them an updated list of	11	if any, that you received directly from
12	the securities that were transferred and the	12	Lehman or its advisors, but if you have
13	market values as of the 19th.	13	heard any information related to this from
14	Q. Were you seeking updated marks as of	14	counsel, don't answer that.
15	September 19th?	15	THE WITNESS: So repeat the question.
16	A. Yes, I was.	16	Sorry.
17	Q. The systems at that time were still	17	(Question was read back as follows:
18	under the control of Lehman, correct?	18	"QUESTION: Did you ever find out
19	MS. TAGGART: Object to form.	19	whether Lehman, that is, LBI, had updated
20	Foundation.	20	its marks from September 12th, 2008, to
21	A. I do not know when you say under	21	September 19th, 2008?")
22	the control, I do not know what you mean under	22	A. No, I did not find out.
23	the control of Lehman.	23	MS. TAGGART: I think we'd like a
24 25	Q. Well, Barclays had not completed the acquisition as of September 19th, correct?	24 25	break. It's been about an hour. MR. STERN: All right. You've asked

wanted to clarify when we were talking about Exhibit 463B and talking about the third page of that exhibit, that I've seen various schedules prepared. I'm not sure if this is the exact schedule that I have seen. I was not on this email and haven't seen the email, but when we talked about transaction summaries, I had seen some transaction summaries but can't swear that this is the same version wanted to clarify when we were talking Q. Do you have any reason to believe that Alvarez would give a summary to FTI and a provide you with a copy of the same summary? MS. TAGGART: Object to form. Foundation. A. FTI does different things than we do, so they probably give them many things associated with the transaction and this whole case that they don't give us. Page 64 M. Fazio M. Fazio	that I had seen. BY MR. STERN: Q. Do you recall receiving a summary of the transaction from Alvarez during the week after the closing? A. Not during the week after the closing, no. Q. At what point? A. I would have seen when I've been talking to Alvarez, things that they might have been working on at the time, so I might have seen a draft that looked like this. I can't say if the numbers are exactly the same at this moment, but in October I think I would have seen something that they would have been working on. Q. Do you have any reason to believe that Alvarez would give a summary to FTI and not provide you with a copy of the same summary?
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Page 64 Page 1 M. Fazio	
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	1 M. Fazio
TA OF FOUR ECAN ANCHORD INCENTION WITH TA WIN LAUGART TO TEATTIFM	2 MS. TAGGART: to reaffirm
3 Alvarez and FTI? 3 testimony	
4 A. Right. 4 MR. STERN: Please.	J
6 A. Correct. 6 given.	
7 Q. And do you recall one way or the 7 MR. STERN: Counsel	[
8 other whether you were given this summary in one 8 MS. TAGGART: You can answer	
9 of those meetings? 9 MR. STERN: this is not proper	
10 A. I do not recall receiving this 10 under the local rules.	T T
summary in any meeting. 11 MS. TAGGART: that question.	l l
12 I might have seen drafts of it that 12 Asked and answered again.	
they would have had, but I would not have been MR. STERN: Counsel, this is not	
given a copy of that. 14 proper under the local rules. You know	,
Q. You have a specific recollection that 15 that.	
receive this summary in one of those early proper under the local rules.	
	1 1
MS. TAGGART: Objection. Asked and 19 hostile.	
20 answered and argumentative. 20 Can you repeat the question.	
21 BY MR. STERN: 21 (Question was read back as follows:	, , , , , , , , , , , , , , , , , , ,
	22 "QUESTION: You have a specific
MR. STERN: Please. 25 in one of those early meetings with	recollection that you can testify to under

	Page 70		Page 71
1	M. Fazio	1	M. Fazio
2	Q. So when you testified concerning the	2	more specific about what testimony you want
3	line "Negotiated Mark Haircut," was that	3	him to discuss now.
4	testimony accurate?	4	MR. STERN: I don't think so.
	•		
5	MS. TAGGART: Object to form.	5	BY MR. STERN:
6	A. I have had discussions with Alvarez	6	Q. Was that testimony accurate?
7	and have seen documents that they have produced	7	A. All my testimony
8	for the committee which have used those terms,	8	MS. TAGGART: Object to form.
9	and I have asked various questions of Alvarez	9	A is accurate, yes.
10	throughout this case and my understanding about	10	And with respect to stale marks, they
11	that \$5 million is still the same; with respect	11	have used that term before, Alvarez & Marsal.
12	· ·	12	Q. Okay. Let me show you a document
13	securities that detail the transaction and the	13	that we've previously marked as Exhibit 466.
14		14	I'll ask you to please review that
15	Ç	15	and tell me what it is.
16	date as far as I'm aware.	16	(Document review.)
17	Q. So you referred to \$5 million.	17	A. It's an email from Brad Geer to
18	You meant \$5 billion?	18	Crayton Bell and myself.
19	A. \$5 billion, yes.	19	Q. And what is the attachment to it?
20		20	A. Well, there's a lot of redacted
21	document and the line that reads "Assets	21	things, but the attachment is, it looks like it
22		22	says "Footnote A, securities transferred under
23		23	Barclays repo agreement."
24	MS. TAGGART: Object to form.	24	Q. And do you see on that document
25	I think you're going to have to be	25	there's handwritten brackets next to certain of
	Page 72		Page 73
1	Page 72 M. Fazio	1	Page 73 M. Fazio
1 2		1 2	
	M. Fazio		M. Fazio A. Yes.
2	M. Fazio the figures? A. Yup.	2	M. Fazio A. Yes. Q. And aside from yourself, were there
2	M. Fazio the figures?	2 3	M. Fazio A. Yes.
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	Page 78		Page 79
1	M. Fazio	1	M. Fazio
2	A. No, I do not.	2	replacement of the Fed repo?
3	Q. Did you take any notes during the	3	A. We asked questions that we wanted to
4	meeting?		ask, yes, we were given the opportunity.
5	A. I do not believe so.	4 5	Q. Did Barclays refuse to answer any of
6	Q. Were you involved in any analysis of	6	yours questions?
7	the cure liability that Barclays had assumed?	7	A. I don't know if they refused to
8	MS. TAGGART: You can answer that	8	answer any question.
9	yes, no or I don't know.	9	I know that they we had still come
10	A. No.	10	out of that meeting requesting significant
11	Q. Do you recall attending a meeting in	11	amounts of information that we did not get, so
12	February 2009 at these offices, Boies Schiller,	12	if you say that we did not get information that
13	with representatives of Barclays Capital?	13	we had requested numerous times, then I would
14	A. Yes.	14	say that they didn't answer all the questions.
15	Q. And do you recall that Mr. King and	15	Q. I understand that there was a
16	Mr. Keegan from Barclays and Mr. Larocca from	16	follow-up request by the committee for
17	Barclays attended that meeting?	17	documents; is that right?
18	A. I believe all three were present.	18	A. That's correct.
19	Q. And do you recall there was	19	Q. Putting aside the request for
20	discussion at that meeting concerning Barclays'	20	documents, were there any questions that you
21	replacement of the Fed repo?	21	posed in that meeting that the Barclays people
22	A. Yes.	22	refused to answer?
23	Q. At that meeting were you and others	23	MS. TAGGART: Object to form.
24	from Houlihan given an opportunity to ask	24	Argumentative. Asked and answered.
25	questions that you had concerning Barclays'	25	You can answer again.
	Page 80		Page 81
1	M. Fazio	1	M. Fazio
2	A. As I said, the main purpose of the	2	Foundation.
3	meeting is to get information associated with	3	A. They have given some documents to the
4	the detailed schedules that we had requested	4	committee, that's correct.
5	numerous times and have not received, so if you	5	They have not answered all of my
6	say did they not answer a question by not giving	6	questions to give me a detailed listing of every
7	us information, I would contend that they didn't	7	security that was transferred and its market
8	answer all our questions, yes.	8	value on the 19th.
9	Q. In the meeting, do you recall a	9	Q. Have you reviewed Professor
10	specific question that you or others on behalf	10	Pfleiderer's report in this case?
11	of the committee asked that Barclays did not	11	A. I do not believe I have. I'd have to
12		12	see it, but I don't believe so.
13	A. We asked for documents and we did not	13	Q. Do you recall the volume of material
14	receive them, so I think that's a question, can	14	that Barclays produced after that February 2009
15	we get the documents, and since we haven't	15	meeting?
16			
	received them, I guess that's a non-answer.	16	MS. TAGGART: Object to form and
17	received them, I guess that's a non-answer. Q. Well, do you recall when the	16 17	MS. TAGGART: Object to form and foundation.
17 18	Q. Well, do you recall when the		foundation.
		17	foundation. And are you including in this
18	Q. Well, do you recall when the committee made its request for documents?A. I don't have the exact dates, no.	17 18	foundation.
18 19	Q. Well, do you recall when the committee made its request for documents?	17 18 19	foundation. And are you including in this litigation? BY MR. STERN:
18 19 20 21	Q. Well, do you recall when the committee made its request for documents?A. I don't have the exact dates, no.I'd have to go back to emails and requests for information.	17 18 19 20	foundation. And are you including in this litigation? BY MR. STERN: Q. Do you recall how many documents
18 19 20	Q. Well, do you recall when the committee made its request for documents?A. I don't have the exact dates, no.I'd have to go back to emails and requests for	17 18 19 20 21	foundation. And are you including in this litigation? BY MR. STERN:
18 19 20 21 22	Q. Well, do you recall when the committee made its request for documents? A. I don't have the exact dates, no. I'd have to go back to emails and requests for information. Q. Subsequently Barclays did produce	17 18 19 20 21 22	foundation. And are you including in this litigation? BY MR. STERN: Q. Do you recall how many documents Barclays produced voluntarily to Houlihan after

1 M. Fazio 2 And if you won't say that you're 3 asking something about the litigation, then 4 I have to instruct on privilege and 5 instruct not to answer. 6 Just ask before the litigation and 7 I'll let him answer, but if it gets into 8 what has he seen and talked about, what 9 production we've gotten from Barclays 10 MR. STERN: Please, please, Counsel, 11 Counsel, I'm not looking for speeches. 12 BY MR. STERN: Please, please, Counsel, 13 Q. After the February 2009 meeting, 14 Houlihan received documents from Barclays, 15 correct? 16 MS. TAGGART: Objection and still 17 objecting to form, and unless you're going 18 to limit it before the litigation, I'm 19 going to instruct not to answer on 10 privilege. 21 MR. STERN: You're instructing him 18 not to answer whether Houlihan received 22 documents from Barclays on grounds of 23 queries of the privilege of the privilege? 25 MS. TAGGART: Well, yes, because if 26 MS. TAGGART: Woll, yes, because if 27 MR. STERN: Objection 28 MR. STERN: Objection on to answer whether Houlihan received documents from Barclays on grounds of privilege? 29 privilege of the privilege	2	Page 82		Page 83
And if you won't say that you're asking something about the litigation, then I have to instruct on privilege and instruct not to answer. Just ask before the litigation and I'll let him answer, but if it gets into what has he seen and talked about, what production we've gotten from Barclays MR. STERN: Please, please, Counsel, Counsel, I'm not looking for speeches. BY MR. STERN: Please, please, Counsel, MS. TAGGART: objection and still Objecting to form, and unless you're going to limit it before the litigation, I'm objecting to form, and unless you're going to instruct not to answer whether Houlihan received documents from Barclays or privilege. MR. STERN: You're instructing him not to answer whether Houlihan received documents from Barclays or privilege? MR. STERN: You're instructing him not to answer whether Houlihan received documents from Barclays or grounds of privilege? MR. STERN: You're instructing him not to answer. MR. STERN: Please, Counsel, MR. STERN: Please. This is not a time for us to have a colloquy. BY MR. STERN: Q. After that February 2009 meeting and after Barclays produced documents to the committee, what did the committee do to raise any follow-up questions with Barclays? MR. STERN: Did MR. STERN: Okay. Fine. I don't agree with that assertion or many of your other assertions concerning privilege but MR. STERN: we can take that up separately. MR. STERN: Please. This is not a time for us to have a colloquy. BY MR. STERN: Did MR. STERN: Di	2	M Fazio	1	M Fazio
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19 THE WITNESS: Go ahead. 19 form, foundation and privilege.				form, foundation and privilege.
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You should respond to what you personally did if that's correct. 19 questions other than the information to requested on the detailed schedules the	ur
personally did if that's correct. 20 requested on the detailed schedules th	
A. And I responded numerous times to 21 subject matter of the follow-up letters	
you, but I'll respond again. 22 were sent to Barclays and yourselves.	
I did not have any conversations with 23 Q. And after documents were pro-	
24 Barclay personnel for a follow-up meeting. 24 nobody acting on behalf of the commit	
Q. If you had open questions, why didn't 25 your knowledge, requested a follow-u	
Page 88	Page 89
1 M. Fazio 1 M. Fazio	
with Barclays representatives; is that correct? 2 MS. TAGGART: Okay. You	ı can answer
3 MS. TAGGART: Object to form, 3 if you have knowledge outside of	
foundation and privilege. 4 communications with counsel.	
5 If you have any information that's 5 A. I have no knowledge outside	of
6 separate from your communications with 6 discussions with counsel.	01
7 counsel, then you can talk about that. 7 Q. Based on the written material	l that
8 A. All of my conversations were with 8 you received from Barclays, did you	
9 counsel. 9 follow-up questions to raise with Bar	
Q. Putting aside your communications 10 MS. TAGGART: Object to for	
with counsel, do you have any knowledge of any 11 You can answer yes or no to the	
request for a follow-up meeting with Barclays 12 A. We have many follow-up que	
any time after that February 2009 meeting? 13 information requests from Barclays.	
MS. TAGGART: First, for the record, 14 Q. Did you ever suggest that the	ere
I object to Mr. Stern laughing as he's should be a follow-up, face-to-face m	
asking that question. Barclays in order to address those que	
MR. STERN: I'm not laughing. 17 MS. TAGGART: Objection.	
MS. TAGGART: I'm objecting to form. 18 foundation and I'm going to instru	
MR. STERN: I'm not laughing. I'm privilege no to answer on the sc	
20 asking a question. 20 privilege if this was communication	
21 BY MR. STERN: 21 the you and your counsel.	
Q. Aside from your communications with 22 If you disclosed that to someone	
counsel, do you have any recollection of the 23 other than Houlihan and your countries.	ne
committee requesting a follow-up meeting with 24 can answer.	
25 Barclays? 25 A. All my discussions were with	

privilege. BY MR. STERN: Q. Do you recall that when Barclays initially produced documents to the committee, those documents were produced in a TIFF format? A. I don't recall what format they were received in. Q. Do you recall subsequently they were call at 1:00 p.m., an email from Houlihan Lokey summarizing the current state of the LBI/Barclays transaction. Q. Did you have any role in drafting the email from Houlihan Lokey summarizing the current state of the LBI/Barclays transaction? A. I would have reviewed it. Q. Do you know who drafted it?		Page 90		Page 91
2 on this matter. Q. Well, then let me just ask about your point of view. Would you have found it helpful, given your review of the documents that Barclays provided, to have a face-to-face meeting once again with Mr. King, for example, with Mr. Keegan, for example, with Mr. Keegan, for example, with Mr. Keegan, for example, with to the extent you understand, you can answer. 1 To the extent you understand, you can answer. 1 A. I think that there's many things that to give us that information and to have that information would be very helpful, yes. 10 Q. So in your view, it would have been helpful to have had a follow-up meeting with Mr. King and Mr. Keegan. 2 A. I did not	1	M. Fazio	1	M. Fazio
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Interrupting him. MR. STERN: A constitute request a follow-up meeting with with x- king. A communications with the state and some answerd. 1				•
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7 provided, to have a face-to-face meeting once again with Mr. King, for example, with Mr. Keegan, for example? 10 MS. TAGGART: Object to form. 12 answer. 13 A. I think that there's many things that 14 we have requested from Barclays, and to ask them 15 to give us that information and to have that information would be very helpful, yes. 16 Q. So in your view, it would have been 17 Mr. King and Mr. Keegan. 17 Mr. King and Mr. Keegan. 18 Mr. TAGGART: Object to form. 19 Mr. King and Mr. Keegan. 19 Mr. A. I understand that, but I - 20 Q. Can you answer my question? 19 Mr. A. I understand that, but I - 20 Q. Can you answer my question? 20 A. I don't recall what format the Barclays representatives? 21 Ms. TAGGART: I'm going to object to form and instruct not to answer on automey-client and work product privilege. 19 Q. Do you know of any reason why the committee request a follow-up meeting with 19 Mr. STERN: 19 Q. Do you know of any reason why the committee of motion after that February 2009 meeting did the committee request a follow-up meeting with 19 Mr. STERN: 19 Q. Do you recall that when Barclays initially produced documents were produced in a TIFF format? 20 Q. Do you recall subsequently they were 21 Go Do you recall subsequently they were 22 received in. 20 Q. Do you recall subsequently they were 23 Q. Do you wook work afted it? 24 Q. Do you wook work afted it? 24 Q. Do you wook work afted it? 25 Q. Do you recall subsequently they were 24 Q. Do you wook work afted it? 25 Q. Do you wook work afted it? 26 Q. Do you wook work afted it? 26 Q. Do you wook work afted it? 27 Q. Do you wook work afted it? 27 Q. Do you wook work afted it? 28 Q. Do you wook work afted it? 28 Q. Do you wook work afted it? 28 Q. Do you wook work afted it? 29 Q. Do y				v v
again with Mr. King, for example, with Mr. Keegan, for example, with Mr. Keegan, for example, with Mr. Keegan, for example, with To the extent you understand, you can The WITNESS: No. A. I did not Do you have anything more to say? THE WITNESS: No. A. Go to the next question. O. The question is, would you have found it helpful at the time after receiving with Mr. King and Mr. Keegan for example? Mr. TadGART: Object to form. A. I did not Mr. TadGART: Object to form. A. I did not Mr. TadGART: Object to form. A. I did not Mr. TadGART: Object to form. A. I did not Mr. TadGART: Object to form. A. I did not Mr. TadGART: Object to form. A. I understand that, but I Mr. TadGART: Object to form. A. I understand that, but I Mr. TadGART: Object to form. A. I understand that, but I Mr. TadGART: Object to form. A. I do for example? Mr. Fazio Mr. Fazio A. I don't recall what formats they were received in. Mr. STERN: Do you recall that when Barclays individuals with attachment, Bates stamped HLHZ0009961, marked for identification, as of this date.) Mr. TadGART: Objection to form and Imperior object to form and instruct not to answer on privilege. Mr. TadGART: Objection to form and Imperior object to form. Do you kave anything more to say? The WITNESS: No. A. Go to the next question. A. Go to the next question. A. I delout-in-face-to-face meeting with Mr. King and Mr. Keegan for example? Mr.				
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answer. A. I think that there's many things that we have requested from Barclays, and to ask them to give us that information and to have that information would be very helpful, yes. Q. So in your view, it would have been helpful to have had a follow-up meeting with Mr. King and Mr. Keegan. A. I did not MS. TAGGART: Object to form. A say that. Q. Well, that was my question though. A. I understand that, but 1 Q. Can you answer my question? Page 92 M. Fazio associated with this transaction. Q. Do you know of any reason, do you know of any reason why the committee did not request a follow-up meeting with the Barclays representatives? MS. TAGGART: I'm going to object to form and instruct not to answer on attorney-client and work product privilege. BY MR. STERN: Q. Did it concern you personally that at no time after that February 2009 meeting did the committee request a follow-up meeting with the Barclays representatives? Did that concern you? MS. TAGGART: Object to form. A. I don't recall what format they were page 92 M. Fazio A. I don't recall what formats they were page 93 M. Fazio A. I don't recall what formats they were page 94 MS. TAGGART: Die to form. A. I don't recall what format they were page 95 MR. STERN: Q. Did it concern you personally that at not ime after that February 2009 meeting did the committee request a follow-up meeting with the mater that february 2009 meeting did the committee request a follow-up meeting with the sarclays representatives? Did that concern you? MS. TAGGART: Object to form. A. I don't recall what format they were page 93 M. Fazio A. I don't recall what format they were page 94 MS. TAGGART: Object to form. A. I don't recall what format they were page 95 M. Fazio A. I don't recall what format ded by 9/22/08 from O'Donnell to various individuals with attachment, Bates stamped HLHZ0009061, marked for identification, as of this date.) Py MR. STERN: Q. Do you recall that when Barclays initially produced documents were produced in a TIF		•		
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Q. Do you recall that when Barclays initially produced documents to the committee, those documents were produced in a TIFF format? A. I don't recall what format they were received in. Q. Do you recall subsequently they were received it. Q. Do you know who drafted it?	18			
initially produced documents to the committee, those documents were produced in a TIFF format? A. I don't recall what format they were A. I don't recall what format they were Current state of the LBI/Barclays transaction? A. I would have reviewed it. Q. Do you recall subsequently they were 20 Q. Did you have any role in drafting the email from Houlihan Lokey summarizing the current state of the LBI/Barclays transaction? A. I would have reviewed it. Q. Do you know who drafted it?	19			
those documents were produced in a TIFF format? A. I don't recall what format they were A. I don't recall what format they were Current state of the LBI/Barclays transaction? A. I would have reviewed it. Q. Do you recall subsequently they were Q. Do you know who drafted it?	20			
A. I don't recall what format they were current state of the LBI/Barclays transaction? A. I would have reviewed it. Q. Do you recall subsequently they were Q. Do you know who drafted it?	21			
23 received in. 24 Q. Do you recall subsequently they were 23 A. I would have reviewed it. 24 Q. Do you know who drafted it?	22			
Q. Do you recall subsequently they were Q. Do you know who drafted it?	23			
	24			
	25			

	Page 94		Page 95
1	M. Fazio	1	M. Fazio
2	author was, no.	2	Houlihan Lokey would have been sent to the
3	Q. Was that email prepared by Houlihan	3	committee and whether the committee would have
4	in order to communicate certain facts to the	4	needed that information in any event, whether or
5	Creditors Committee?	5	not it was prepared in anticipation of
6	MS. TAGGART: Object to form.	6	litigation?
7	A. It would have been written to	7	MS. TAGGART: Object to form,
8	summarize the current state of the transaction	8	foundation and I'm going to instruct not to
9	as we knew it as of that time.	9	answer on privilege.
10		10	BY MR. STERN:
11	Q. This was that thin property in order	11	Q. Regardless of whether there was any
12	T	12	anticipation of litigation at the time, did the
13	\mathcal{C}	13	Houlihan Lokey email contain information that
14		14	the committee needed at the time in order to
15		15	make certain decisions?
16		16	MS. TAGGART: Object to form,
17		17	foundation and instruct you not to answer
18		18	on privilege.
19		19	MR. STERN: Let's mark this as the
20	r	20	next exhibit.
21	8	21	(Deposition Exhibit 620A, Email chain
22		22	beginning with email dated 9/21/08 from
23	\mathcal{E}	23	O'Donnell to Bell, Bates stamped
24	$_{1}$	24	MTHM00007214 through 7218, marked for
25		25 25	identification, as of this date.)
	Page 96		Page 97
1	M. Fazio	1	M. Fazio
2	BY MR. STERN:	2	on privilege.
3	Q. This appears to be a series of emails	3	And also note that this is a summary
4	referring to a "Summary of the LBI Sale	4	from Milbank.
5	Hearing."	5	BY MR. STERN:
6	Do you see that?	6	Q. Same question.
7	A. That's the title of this, yes.	7	MS. TAGGART: Same objections and
8	Q. Looking at the second page of this	8	instruction.
9	exhibit, does this refresh your recollection	9	BY MR. STERN:
10	· · · · · · · · · · · · · · · · · · ·	10	Q. Regardless of the author, do you know
11		11	whether this Summary of the LBI Sale Hearing was
12		12	intended to communicate certain facts to the
13		13	committee concerning the sale hearing?
14		14	MS. TAGGART: So same objections and
15		15	instructions. Don't answer.
16		16	BY MR. STERN:
17	Ç. 200 H 2001-8 2001	17	Q. Do you know whether this summary was
18		18	prepared in anticipation of litigation
19		19	concerning the sale transaction?
20		20	MS. TAGGART: Same objections and
21		21	instruction.
22		22	BY MR. STERN:
23	\mathcal{E}	23	Q. Do you know whether this is a summary
24	J	24	that the committee would have needed in any
25		25 25	event, without regard to whether there might be
L . 1			

	Page 98		Page 99
1	M. Fazio	1	M. Fazio
2	anticipated litigation, in order to make certain	2	committee needed to know?
3	decisions concerning the transaction?	3	MS. TAGGART: You can answer yes or
4	MS. TAGGART: Same objections and	4	no or I don't know.
5	instruction.	5	A. I don't know.
6	BY MR. STERN:	6	Q. Do you know whether the information
7	Q. I'll give you a document that we	7	that was redacted was information that was
8	previously marked as Exhibit 476B, and I'll just	8	prepared in anticipation of litigation relating
9	point out that in the cc line there's a lengthy	9	to the sale transaction?
10	list of recipients and you are included as one.	10	MS. TAGGART: I'm going to object to
11	Can you tell me what this document		form, foundation and instruct not to answer
12	is?	12	on privilege.
13	A. There's a bunch of information that's	13	BY MR. STERN:
14	been redacted, but the attachment is entitled	14	Q. Do you know whether the information
15	•	15	that's redacted is information that the
16	"Transcript Barclays/Lehman Agreement Announcement September 17th, 2008."	16	committee would have needed in any event,
17	Q. Now with respect to the information	17	without regard to any anticipated litigation?
18		18	MS. TAGGART: I'm same objections
19	that was redacted, do you know whether that information consisted of a summary of the	19	and instruction.
20	•	20	BY MR. STERN:
21	transcript that was attached?	21	Q. Do you know whether the information
22	MS. TAGGART: You can answer yes or no or I don't know to that.	22	that was redacted was information that the
23	A. I do not know.	23	committee needed in order to make certain
2.3 2.4		24	decisions in connection with the sale
25	Q. Do you know whether the information that was redacted included facts that the	25	transaction?
2.5		2.5	
	Page 100		Page 101
1	M. Fazio	1	M. Fazio
2	MS. TAGGART: Same objection and	2	Mr. O'Donnell, Mr. Bell and Mr. Geer.
3	instruction.	3	In your communication which is
4	MR. STERN: Let's mark this as the	4	redacted here, were you commenting on the draft
5	next exhibit.	5	Clarification Letter?
6	(Deposition Exhibit 621 A, Email	6	MS. TAGGART: I'm going to object and
7	chain beginning with email dated 9/20/08	7	instruct not to answer on privilege.
8	from Fazio to O'Donnell with attachment,	8	BY MR. STERN:
9	Bates stamped HLHZ0027996 through 998,	9	Q. In your communication, were you
10	marked for identification, as of this	10	suggesting changes to the Clarification Letter?
11	date.)	11	MS. TAGGART: Same objection and
12	BY MR. STERN:	12 13	instruction.
13	Q. I'll ask you to please review 621A		BY MR. STERN:
14	and tell us what it is.	14	Q. Do you know whether before you wrote
15 16	(Document review.)	15 16	your email you reviewed the draft that had been
16 17	A. It's an email from myself to Dennis		provided to you?
	O'Donnell, Craig Bell and Brad Geer. The	17	MS. TAGGART: You can answer.
18	subject matter is Lehman/Barclays.	18	A. I do not know. Now before the September 10th Sale
19 20	Q. Now in the bottom email on the first	19	Q. Now before the September 19th Sale
20	page Mr. Bell writes, "Here is the draft	20	Hearing, did you participate in any discussions
21	Clarification Letter. This represents Weil's	21 22	with Mr. Seery, James Seery, concerning the
22	view of the deal and Barclays is reviewing		anticipated transaction?
23	Dennis O'Donnell. Can you please send to the	2324	A. I believe I was party to a conference call with him.
24	Houlihan team."		
25	And then above you write an email to	25	Q. In that conference call, do you

	Page 102		Page 103
1	M. Fazio	1	M. Fazio
1 2	recall whether Mr. Seery described to Houlihan	1 2	worked in the business?
3	how the exchange-traded derivatives business	3	
4	would be treated in the anticipated transaction?	4	A. No. I do not remember specifically,
		5	MD CTEDNI. I have no further
5	A. I do not recall specifically how he		MR. STERN: I have no further
6	indicated it would be treated.	6	questions.
7	Q. Do you recall generally?	7	THE VIDEOGRAPHER: The time is 11:45
8	A. I do not recall generally what he	8	a.m. We're going off the record.
9	would have said in that meeting with regard to	9	(Time noted: 11:45 a.m.)
10	8	10	
11		11	MICHAELA EAZIO
12		12	MICHAEL A. FAZIO
13	$\mathcal E$	13	
14	\mathcal{E}	14	
15		15	Subscribed and sworn to before me
16		16	this day of 2010.
17	8. 8	17	
18	r	18	
19	1 1	19	
20	, ,	20	
21		21	
22		22	
23		23	
24	8	24	
25	business to Barclays aside from the people who	25	
	Page 104		Page 105
1		1	
2	CERTIFICATE	2	INDEX
3		3	
4	STATE OF NEW YORK)	4	Witness Page
5) ss.:	5	
6	COUNTY OF QUEENS)	6	MICHAEL A. FAZIO
7		7	MR. STERN 7
8	I, ANNETTE ARLEQUIN, a Notary Public	8	
9	within and for the State of New York, do	9	QUESTIONS INSTRUCTED NOT TO ANSWER
10	nervey certain.	10	Page Line
11		11	15 24
12	whose deposition is hereinbefore set forth,	12	16 24
13	· · · · · · · · · · · · · · · · · · ·	13	17 14
14	or r	14	18 4
15	testimony given by such witness.	15	36 5
16		16	37 19
17	related to any of the parties to this	17	39 10
18		18	42 6
19		19	43 20
20		20	44 5
21	IN WITNESS WHEREOF, I have hereunto	21	44 10
22		22	44 21
23		23	
24		24	
25	ANNETTE ARLEQUIN, CCR, RPR	25	

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Page 1
 1
 2
               UNITED STATES BANKRUPTCY COURT
 3
                SOUTHERN DISTRICT OF NEW YORK
     -----x
 5
     In Re:
 6
                              Chapter 11
 7
     LEHMAN BROTHERS Case No. 08-13555(JMP)
 8
     HOLDINGS, INC., et al, (Jointly Administered)
                    Debtors.
10
11
12
                * * *HIGHLY CONFIDENTIAL* * *
13
             DEPOSITION OF ERIC JONATHAN FELDER
14
                     New York, New York
15
                        July 31, 2009
16
17
     Reported by:
18
     MARY F. BOWMAN, RPR, CRR
19
     JOB NO. 24018
20
21
22
23
24
25
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Page 10 Page 11 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 1 2 2 **Brothers, correct?** transcript as highly confidential, and 3 3 A. Correct. within a week, we will dedesignate as 4 appropriate under the order. Q. Starting on September 9 or thereabouts 4 5 5 **EXAMINATION BY** of 2008? 6 6 A. I believe it was September 8. MR. CARDEN: 7 Q. I am sorry, I meant that -- that's 7 Q. Good morning, Mr. Felder. 8 8 Good morning. exactly what I meant to say actually. 9 9 Q. You are currently employed by Prior to that, what was your -- what was your previous title and job? Barclays, correct? 10 10 Correct. 11 A. I was global head of global credit 11 12 What is your current position, sir? 12 products, since June of '08. 0. 13 13 I'm the head of global credit trading. Q. And in that position, what were your 14 O. And how long have you held that 14 responsibilities? A. The businesses that rolled up into 15 position? 15 16 Since September '08. 16 global credit products were high-grade, high-yield 17 CDOs, municipals, and the credit portion of Q. And as head of global trading, just 17 18 generally speaking, what are your 18 emerging markets, the corporate credit portion of 19 19 emerging markets. responsibilities? 20 A. Responsible for secondary trading of 20 Q. In connection with your 21 cash corporate bonds, credit default swaps, loans, 21 responsibilities as global head of credit products, did you have any responsibilities of any 22 and the municipal securities business rolls into 22 23 23 kind with regard to repos? credit. 24 Q. Prior to being employed by Barclays, 24 25 And when you took over as head of 25 you were cohead of fixed income at Lehman TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 13 Page 12 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 fixed income on September 8, 2008, what were your been a JV with equity. I don't know exactly how 3 it was set up because you obviously finance more responsibilities? 4 A. They were never specifically told to 4 than just fixed-income product. And commercial 5 5 me. real estate. 6 6 Q. Did you have an understanding as to Q. I'm just going to read you a list of 7 asset classes and if you tell me whether you what they were to be? 8 8 A. We had -- I had a brief conversation consider them to have been in the fixed income 9 9 with Mike Gelband, with Hyung Lee, who is my area at Lehman as of September 2008. All right? cohead, about how the portfolio would be split up And I'm just reading now what legends I have been 10 10 11 11 between the two of us in a normal business given, so these might not be completely fulsome. 12 **CDs and other money market** 12 environment, and I was going to be responsible for -- or focus on the credit portion and the 13 instruments? 13 14 14 mortgage portion, and then Hyung would focus on FX A. **Total -- corporate obligations and** 15 and commodities and more focus outside of the U.S. 15 Q. with my focus in the U.S., because he came from 16 16 spot? Asia. 17 17 I don't know what that means. A. 18 Q. I would like you to tell me what you 18 Q. **OK.** Corporate stocks and options? 19 consider to have been in the fixed income area at 19 A. Lehman Brothers as of the time that you had that O. Derivatives and other -- and it is cut 20 20 21 conversation. 21 off so I can't -- it would have been some 22 A. In fixed income, you would have had 22 derivative products. rates, commodities, foreign exchange, credit, A. There would have been some, yeah. 23 23 Q. Some. OK. 24 mortgages, emerging markets, and financing would 24 have been part of fixed income, or it might have 25 Governments and agencies would have TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580

Page 14 Page 15 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 2 been a fixed income, correct? be discussions concerning the sale of the entire 3 3 A. Correct. firm? 4 4 Q. Mortgages and -- any mortgage-backed A. Correct. 5 5 securities would have been as well, correct? Q. Were you involved in any of those 6 A. Correct. 6 conversations? 7 7 Q. Now, when you had the conversation A. I was involved in, if people needed 8 concerning how to divide the fixed income information, I was there to help gather 9 portfolio, was it -- it was divided along product information that would have been needed. 10 lines or asset classes as well as geography? Q. OK. Let's talk -- is there any other 10 11 A. That was the initial intention. It 11 way in which you were -- strike that. 12 I take it vou weren't negotiating for 12 was -- nothing was ever put into --13 Q. It never functioned? 13 the firm in any respect? 14 A. Because, you know, that week was 14 A. I was not negotiating. Q. You were providing a support, support 15 the -- when the firm ultimately went under. 15 16 16 Q. Let's talk about that week. We are for those who needed information in connection now talking about the week of -- I brought a 17 17 with the negotiations that were ongoing at the calendar so we have a, as I said before, a prop. 18 time with Bank of America and perhaps others, 18 Why don't you avail yourself of it as you wish. I 19 correct? 19 20 don't see any need to mark it. The dates are what 20 A. Correct. 21 they are from time immemorial to the end of time. 21 Q. Was there anyone in particular that 22 You were made the head of fixed income 22 was asking you for information during that week? 23 A. There would be a number of people that 23 on Monday, the 8th of September, correct? 24 A. Correct. 24 would say go get a particular person and send them Q. At some time that week there began to 25 to a room or tell -- relay instructions throughout TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 16 Page 17 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 1 2 that -- really from Friday on. worked to your knowledge asked to provide 3 valuations on any asset classes? 3 Q. Are we talking about Friday the 12th? 4 A. Correct. 4 A. I would be assuming. 5 Q. Let's go back to who asked you to help 5 O. So your first conversations concerning 6 any transaction in which the firm was to be sold on that Friday. Can you give me any names of 6 7 7 to B of A or anyone else began on that Friday? people who were involved? 8 A. Mike Gelband. 8 A. I never had a conversation about a 9 Q. What was Mike's position at the time? 9 transaction. It was -- I was told to go to a 10 A. He was global head of all of debt and 10 legal office and help in providing and gathering equity. So all -- excuse me, all of fixed income any information that would have been needed for a 11 11 and equity. 12 due diligence. 12 13 O. Did you report to him? 13 Q. What kind of information were you 14 14 asked to get? A. I reported to Mike. 15 A. In most cases, it was to get a product 15 Q. Anyone else, anyone other than Mike 16 ask you to provide any information on that Friday 16 expert around a specific asset class that either 17 17 Barclays or Bank America wanted to discuss. Or 18 specifically, within -- within credit, where that 18 A. I believe Ian Lowitt, who was the CFO, 19 business had rolled up in to me, if I had any risk and not specifically information but Bart McDade 20 reports or specific information that was asked. 20 would tell people where to go and be ready for 21 Q. Were you asked to provide any 21 any, you know, any questions or requests. And I'm valuations or assist in the obtaining of 22 22 sorry, also Alex Kirk. valuations of any asset classes? 23 23 Q. I was going to ask you about Alex. 24 24 What was Alex's position at that time? A. No. 25 A. I don't know the exact definition of Q. Were any of the people with whom you 25 TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580

Pg 109 of 194 Page 18 Page 19 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 2 it, but he was brought back by Bart and he was on have a recollection of having been asked to 3 the executive committee, and I believe his title 3 provide the position sheets for some particular at that time was head of principal investing. 4 area in the fixed income department? 4 He -- but he had been the prior co-COO of fixed 5 A. On Friday, I don't remember the law 5 6 income, and so it -- he had a -- he had an 6 firm, but I was with the Bank America people and 7 institutional knowledge of a broad array of the 7 they asked to look at credit positions. They 8 asset classes within fixed income. 8 didn't seem focused on any of the investment grade 9 9 Q. And you said that Bart brought him securities. They wanted to look at the leveraged back. Did he bring him back from outside the loans. 10 10 11 firm? 11 So I had Jim Seery, who ran leveraged A. He had left the firm in early '08. loans, come to the law offices and then proceed 12 12 Q. When did Bart bring him back? 13 13 with those conversations. A. I believe it was June. At the same 14 14 Q. Do you have a recollection of having time he brought Mike Gelband back. They came back 15 provided any printouts of positions in the fixed 15 16 together. 16 income area to B of A? Not personally but I mean Q. Do you have any recollection as to any in connection with the work you were doing on 17 17 18 specific information that either Mike or Ian, 18 behalf of the firm? 19 Bart, Alex asked you to provide? I'm talking 19 A. There were definitely risk reports in about documentary information as opposed to simply 20 20 these meetings. I don't know if they were turned 21 going to some room at some point. 21 over to Bank America or reviewed there and then 22 A. It was generally around position -- it 22 kept. was around the business heads bringing position 23 23 Q. What are you calling a risk report? 24 sheets or risk reports. 24 Are they position reports, the positions that the 25 firm had, long and short positions? Q. So at some time on the 12th, do you TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 21 Page 20 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 2 A. It depends on the asset class, how the A. The traders within the business that I 3 3 run had to mark their positions. risk reports are, are set up. I'm only knowledgeable really about the credit-specific 4 Q. But you didn't do it personally? 5 risk reports. But they generally give a broad 5 A. I did not mark positions. 6 6 Q. But you were overseeing those who were overview and will list top positions as opposed to 7 7 a very detailed line-by-line summary of the marking positions to establish valuations for the 8 8 positions in the area where you had business. 9 9 Q. When you say top positions, are you responsibility, correct? talking about, say, the top 100 positions that the A. I was overseeing desk heads who were 10 10 11 11 firm is maintaining? Or how are you overseeing the traders who were marking. 12 O. Now, I have seen a phrase used about a 12 **characterizing that?** 13 A. Within a business -- the individual dirty valuation. What's a dirty valuation? Does 13 14 risk manager would set it up however they reviewed 14 that phrase mean anything to you? 15 the risk themselves. So it might be the top 20 15 A. Dirty price means something to me, not longs and the top 20 shorts, or it might be the dirty valuation. 16 16 Q. OK, dirty price? 17 top jump to default positions or the top current 17 A. That would be a security without 18 positions, depending on how you would look at the 18 19 risk. There would be different buckets. 19 accrued interest. 20 Q. How are the valuations on the 20 Q. Did you ever have occasion during the 21 positions in such reports established by the firm 21 time that Lehman was speaking to B of A to look at or how were they established? any of the valuations for the positions within 22 22 23 A. Traders mark their positions each day. your area of responsibility? 23 Q. You didn't have any responsibility for MR. CERESNY: To clarify, when you say 24 24

25

valuations, you mean marks?

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valuations, I take it?

Page 22 Page 23 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 1 2 THE WITNESS: Yes. 2 A. I was there throughout the day. And 3 3 there were -- there were different meetings (Record read) A. I saw -- I could see the marks on 4 4 throughout the day. 5 Q. What was your role in those meetings? 5 positions within credit. 6 A. I was gathering information for, as I 6 Q. When you say the positions within credit, would you amplify upon that for me? What 7 7 mentioned earlier, for example, when they wanted 8 do you mean by that? 8 to talk about leveraged loans, I would go get Jim 9 9 Seery. I gave a brief overview of our credit A. Cash corporate bonds, credit default business. 10 swaps. 10 Q. Treasuries? 11 11 And then away from that, I was really 12 A. Treasuries are in -- would be used as 12 facilitating getting the right people to the 13 a hedge within the credit space, and any marks on 13 location in order to have -- for them to have the 14 Treasuries would be automatically fed from the 14 more detailed conversations by asset class. Treasury group that marked them. 15 Q. And did your meetings with B of A 15 16 Q. But at Lehman, Treasuries were not 16 continue through the weekend or was it only on the within fixed income? 17 17 Friday? 18 A. They were within fixed income. 18 A. It was just Friday. O. In the credit area of fixed income? 19 O. Did you have any meetings of any kind 19 20 A. Correct. They were in the interest 20 with regard to the sale of the firm on the weekend 21 rate business. 21 of the 13th and 14th of September? 22 A. I had similar -- I went to a different 22 Q. You said you were having a meeting or 23 had a meeting with B of A on the Friday. Was law firm on Saturday where the Barclays team was 23 this -- let's talk a little bit about your 24 and had a similar function, where I was there to meetings with B of A. Did you have more than one? 25 try to facilitate anything that people would --TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 25 Page 24 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 2 morning, did you have any other meetings of any information people would have needed. 3 Q. Do you recall with whom at Barclays 3 kind with anybody at Lehman or Barclays or B of A you were meeting? 4 on that weekend in a -- that you haven't spoken A. It was Jerry Del Missier, Eric 5 5 about just generally now? 6 Bommensath, and I believe Mike Keegan. 6 A. Just at the law firm on Friday and Q. Did you have meetings with any B of A 7 Saturday. people on Sunday? Pardon me, I apologize. Did 8 Q. Let's start Monday morning. You 9 9 you have any meetings with any Barclays people on arrive at the office on Monday morning, and tell Sunday? 10 me -- you know, I want to get -- I am going to let 11 A. I don't believe so. 11 you do something I don't like to do. I would like Q. So your meeting with Del Missier, 12 12 a narrative of what you ended up doing that week, Bommen -- how do you say his name? 13 so it will maybe short focus our questions and 13 14 A. Bommensath. 14 maybe shorten this up a little bit. 15 Q. And Keegan on Saturday, at a law firm? 15 Why don't you tell me what happened 16 16 Monday morning when you got into the office, and A. Yes. 17 17 we will start off. Q. Did you or someone underneath your 18 area of responsibility provide any position lists 18 A. It was -- I got to -- I got to the of any kind to the Barclays people? 19 office Monday morning. I believe I went to Mike 19 20 A. I would assume so. Gelband to ask for instructions as to what I was 21 Q. But you don't recall? 21 supposed to be doing, what I was supposed to be 22 A. They -- there were risk reports again directing people to be doing, given the firm had 22 that were -- that were at the meetings. filed for bankruptcy. I was trying to keep people 23 24 Q. OK, let's -- I want to get to the week calm and be supportive, you know, and obviously in a tough time. of the 15th, and before we step off on Monday 25 TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580

Page 30 Page 31 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 Q. And did you ever direct anyone with 2 and then gone home. regard to any of the asset classes that you 3 3 Q. I understand. But did you come back mentioned to any room other than the room you have 4 4 to the office that day? just described on the Monday? 5 5 A. No. б A. On the Monday? I don't know if they 6 O. The next time you came to the office ended up in other rooms. I would say, come up to 7 7 was when? 8 8 the 32nd floor, and then there were just so many A. Was Tuesday. 9 people going around that it's possible that Q. First thing in the morning? A. I believe Tuesday was the day that I someone ended up in a different room than that 10 10 11 room. 11 met with Jerry Del Missier and Bob Diamond about my role specifically, and I don't recall if I went 12 Q. I understand. I am asking if you 12 13 recall having directed anybody else to a different 13 directly to the Barclays building at 200 Park or 14 room that day. 14 to the old Lehman -- I don't recall which I went 15 15 A. No, I don't. to first. 16 Q. How long were you at the firm on that 16 Q. When you say your role, you are 17 17 Monday, the 15th? talking about your role to be at Barclays, if 18 18 A. I was there until I believe, I believe Barclays purchased --5 or 6 o'clock. It might have been a little bit 19 A. If there was -- yes. 19 20 later. Everyone was -- there were still a lot of Q. If there was a transaction? 21 people there, and the requests for me to do things 21 A. Correct. had stopped, so I was just sort of waiting up Q. Let's hold on that for just a moment. 22 22 there. So I went -- so I left. 23 23 That was on the Tuesday, you believe? A. I believe it was on the Tuesday. 24 Q. You went home? 24 25 25 O. So it would have been Tuesday, the A. I might have gone and grabbed a drink TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 32 Page 33 FELDER - HIGHLY CONFIDENTIAL 1 1 FELDER - HIGHLY CONFIDENTIAL 2 16th, correct? the global head of fixed income sales either 3 A. Correct. reported to the head of fixed income or didn't. Q. Did you have any conversations with 4 Sometimes it was separate up into Steve Lessing, anybody at Lehman Brothers or Barclays the evening 5 who ran all distribution. So I had never -- I wasn't -- I had 6 of Monday on the telephone? 6 A. Bart called me and told me that Bob 7 never been told specifically whether Tom reported and Jerry would be reaching out to me over the 8 to me or not. 9 next day to set up a meeting and I should be 9 Q. All right, fine. expecting that. 10 10 Did -- I am sorry, maybe you said 11 Q. Were there any other calls from anyone this. Did you call Tom or did he call you? 11 12 at Lehman Brothers or Barclays on the evening of 12 A. I don't recall. Monday, September 15? Q. Do you remember what you spoke to Tom 13 13 14 A. I believe I spoke to Tom Humphrey. 14 about? Q. You called Tom or he called you? 15 15 A. I asked him how is it going -- he was 16 A. I don't recall. 16 still there. Q. Now, Tom Humphrey was one of the 17 17 O. Still at the firm? 18 people who worked underneath you in the fixed 18 A. Still physically at 745 Seventh. So I income area, correct? was trying throughout the night -- I don't think I 19 19 20 A. No. He was the global head of fixed went to sleep. I was trying to find out are 21 21 things -- how are things going. And he -- I income sales. 22 Q. That was not within your area of 22 remember he gave me an update, and he said it responsibility as cohead of global -- pardon me, 23 23 seems like things were going OK. 24 of global fixed income? 24 Q. You were checking in with him to check 25 A. That wasn't -- at different points, 25 the status of what was happening? TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580

Page 34 Page 35 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 1 2 2 understanding that the negotiations were still to A. Yes. 3 Q. When you left the office on Monday, purchase the entire broker dealer or purchase some was it your understanding that Barclays was going specific positions or other assets of Lehman 4 **Brothers?** to purchase the broker dealer or was going to 5 5 6 purchase certain assets of Lehman Brothers? 6 A. I didn't have specific knowledge. 7 7 Q. Did you have any general knowledge at A. All I --8 MR. STERN: Objection to the form. 8 all? Had you heard anything? 9 A. All I had heard during the day was 9 Q. Go ahead. A. What does that mean? that there was the possibility that Barclays could 10 10 11 MR. STERN: It means --11 buy the broker dealer. Q. When you left on Monday, so far as you 12 O. It means I didn't ask a particularly 12 13 good question on this particular question, but it 13 knew, that was the conversation that was taking place, it was the purchase of the broker dealer? 14 is good enough for the present purposes. 14 MR. STERN: Let's hear the question MR. STERN: Objection to the form. 15 15 A. I didn't have any new -- I didn't have 16 16 again. any new specifics of the details. 17 (Record read). 17 Q. OK. Now, on Tuesday, did there come a 18 MR. CARDEN: I would say Lehman 18 19 Brothers, the assets -- pardon me, the time when you understood that Barclays was 19 broker dealer is not an asset of Lehman considering purchasing something less than the 20 entire broker dealer of Lehman Brothers? 21 Brothers, so I think the question is fine, 21 but I will rephrase it if you really want me 22 22 A. No. 23 23 Q. Did there ever come a time during the to. 24 MR. STERN: Yeah. week of September 15 when you understood that 25 Barclays was going to be purchasing certain Q. When you left on Monday, was it your TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 37 Page 36 1 FELDER - HIGHLY CONFIDENTIAL FELDER - HIGHLY CONFIDENTIAL 2 2 having your conversation with Mr. Diamond and specific assets, meaning positions, asset classes 3 Mr. Del Missier, right? That was at Barclays? 3 and the like of Lehman Brothers? 4 4 I had always heard it was the broker A. Correct. 5 Q. Was anyone else present other than the 5 dealer. 6 6 three of you? Q. When did you first learn that it 7 7 wasn't the broker dealer that Barclays had A. I believe Michael Evans was there. 8 O. Who is Michael Evans? 8 purchased? 9 A. He runs human resources for Barclays. 9 A. I actually thought they did purchase 10 10 the broker dealer. But I'm not positive. 11 Q. To this day? 11 Q. Do you recall whether that was the morning of the 16th? 12 A. Yes. 12 Q. OK. 13 A. I believe it was the morning. 13 14 Q. You can't recall whether you went 14 A. Is that not --15 MR. STERN: There is a distinction 15 straight there or whether you went to the office of Lehman Brothers first? 16 between the assets of the broker dealer and 16 17 the stock of LBI, so --17 A. Correct. 18 MR. CARDEN: OK. 18 Q. How long did you meet with Mr. Diamond 19 and Mr. Del Missier? 19 MR. STERN: That's I think where the 20 20 confusion lies. There really shouldn't be A. It was probably about 45 minutes. 21 any confusion. Not that you shouldn't be 21 Q. Do you know if anyone else at Lehman confused, but rather there shouldn't be any Brothers was meeting with them as well? 22 22 23 confusion on the record because the 23 A. I don't. Q. Did you see any Lehman Brothers people 24 agreement is a matter of public record. 24 25 Q. Let's goes to Tuesday when you're waiting to meet with them? TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580

Pg 113 of 194 Page 38 Page 39 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 1 2 2 A. No. But I do know that other Lehman They explained the structure of the 3 3 people met with them the night before. firm, how sales trading and research all roll up 4 Q. Do you know who met with them the 4 in separate verticals as opposed to having the 5 night before? 5 whole business, and that I would be running the 6 A. I believe Tom Humphrey sent me, I 6 trading portion of the credit business. 7 7 believe, an e-mail saying that he had met with We spoke about that for a while, 8 them. But away from that, I didn't know anyone because I thought that was a major structural 9 9 difference, so we spoke about that for a while. specifically. O. Did you ever learn that other people 10 10 Then we spoke about what compensation 11 at Lehman Brothers had met with Mr. Diamond at 11 they would be willing to offer me. some point on the Monday or the Tuesday? 12 12 Q. What did they tell you about 13 A. Jerry Donini told me that he met with 13 compensation? 14 them. I don't recall when. 14 A. They said they -- I had -- I had 15 Q. Tell me as best you can what contracts from Lehman, and so they said that they 15 16 Mr. Diamond and Mr. Del Missier said to you and 16 were -- you know, they wanted to do what they what you said to them in that meeting on the 17 17 could do to have me in as close to the same spot 18 morning of September 16. 18 that I would have been in if I had stayed at 19 A. They said that they would like for me 19 Lehman and Lehman didn't go bankrupt to join 20 to join the firm running the credit business. 20 Barclays. 21 Then we got into specifics of what that actually 21 Q. Did they give you a specific number, 22 meant. And so it was -- they spoke about that it 22 what that meant? is credit trading, just high grade, high yield. 23 A. The specific numbers within -- for my We were comparing it to my function at Lehman. So 24 '08 compensation for Lehman, the cash component not CDOs, not emerging markets. was \$25 million. And so they said they would give TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 40 Page 41 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 1 2 2 me \$25 million for '08 compensation, split in cash that would be preferrable. So they had to -- they 3 3 checked on that. and equity. 4 In Lehman, I had that in cash, so I 4 And then we spoke about making sure 5 5 said, you know, I said if it is doable all in that -- I said, look, I want this to be fair and cash, that that would be closer to keeping me in 6 6 us to have -- start to be a very good working 7 the same spot than not. relationship, so whatever we need to put in the 8 8 They had to check if that was doable, contract so, you know, I am really going to be 9 so there were a few days then after that before 9 here and stay. I don't want to get this cash from anything -- before I got anything back that 10 you and then have the ability to leave. 10 indicated that -- but they said they would work to 11 So we wrote into the document that I 11 12 see if that made sense. They wanted to see the 12 had to stay until March of '09, otherwise I would 13 Lehman documents, as well. 13 have had to give that money back. And then --14 Q. Meaning Lehman documents related to 14 Q. Give the '08 money back? 15 vour compensation --15 Yes. 16 And then -- I am trying to think if 16 A. Yes. Q. -- or the --17 17 there are any other things. And then I wanted to 18 A. No, Lehman documents related to the 18 make sure that most importantly, that I was going 19 compensation. 19 to be able to bring -- that the people in the 20 I told them -- I had gotten the Lehman credit business at Lehman, I was going to be able 21 money, I already had the cash. I told them I 21 to make sure that they had jobs and that they were 22 intended to give that money back to Lehman as 22 coming also, so we could keep the whole business 23 well. And so if there was a way to have the 23 together, and that I would have some ability to

24

decide who of the people would have -- would be in

each seat. So that I was actually empowered in

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Barclays money given to me earlier than the

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February date, which was the standard date, that

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Page 42 Page 43 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 1 2 2 the business, so that we spoke about that. Q. And was the answer also that they 3 3 would pay it earlier than February? Q. And did they speak in that meeting on 4 4 A. Yes. the Monday -- pardon me, the Tuesday morning, 5 5 And when did they pay it? about '09 compensation? Q. 6 A. The date I believe was -- set in the 6 A. I had '09 guaranteed for Lehman. That 7 7 wasn't the way the Barclays deals were set up from contract was October 31st. I don't recall the what I was told. So it was for '08 and then 8 exact date that the payment occurred. 9 for -- for a portion of the people, I don't know O. And no portion of your '08 income then was equity or stock in Barclays. It was all cash? 10 the number, there were retention payments that 10 11 were one year from your start date and then two 11 Correct. 12 12 years from your start date, and so I was eligible Q. Now, when you spoke to them about 13 13 for the retention payments, the two retention bringing the people in your area over, did you ask 14 payments. 14 whether or not there would be bonuses or payments 15 15 available for them as well? And that, I believe, was a set 16 percentage of 25 percent of the '08 number. I 16 A. Yeah. There was the assumption that 17 people were going to get compensated for -- that 17 believe that was the number. But there was no 18 18 guaranteed -- no guaranteed '09 compensation. people were going to have employment contracts Q. Other than a retention? 19 with Barclays. 19 20 20 Other than a retention. Q. And when you say there was an 21 Q. And were there -- strike that. 21 assumption, what was that based on in your mind? When they finally got back to you on 22 22 A. That people wouldn't -- you wouldn't 23 your request to have it all paid in cash, was the 23 get the people if you didn't compensate them. 24 answer that yes, they would pay it all in cash? 24 People wouldn't have come for nothing. 25 25 Q. Did there ever come a time when you A. Yes. TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 45 Page 44 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 heard that a specific pool of money had been set 2 Q. Did you ever see a copy of the asset 3 aside for the purposes of bringing people over purchase agreement that was entered into between 4 from Lehman to Barclays? 4 Lehman and Barclays on Tuesday, the 16th? 5 5 A. Only when I read it in the New York A. I believe -- there was some document 6 6 Post. that was made public. I don't remember what day, 7 Q. All right. So you have your meeting whether it was Tuesday or Wednesday or Thursday. 7 And I do remember it had -- it was -- it was up on with Diamond and Del Missier on Tuesday morning, 9 9 and following that meeting, you went back to the Web, and I remember it had like hand-scribbled 10 Lehman, I take it? 10 notes all over it on the Web. That got e-mailed 11 A. Yes. around everywhere. I don't know if that is that 12 Q. And I would like you to describe for 12 document, but there was some document that -me your day, if you will, in general terms, and 13 13 O. Did vou read it? 14 then we will come back as to what you were doing 14 A. That I -- I -- I glanced through it. 15 on Tuesday, the 16th. 15 I didn't specifically --A. Really for the rest of that week, it 16 16 Q. Do you recall anything about it? was just trying to keep the people together. 17 17 A. I recall that there was -- there was a 18 People were out interviewing, people were getting connotation of specific numbers of people that had 18 job offers from other firms. There was a lot of 19 19 to come to Barclays as part of the arrangement, or 20 uncertainty. 20 part of whatever the deal was. 21 And I was also trying to relay any 21 Q. Did you ever see the master repurchase 22 instructions that were given around what people 22 agreement between Lehman and Barclays? A. No. sitting in the seats should be doing and that 23 was -- that was the rest -- pretty much the rest 24 Q. Did you ever know there was one? of the week. 25 25

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1	FELDER - HIGHLY CONFIDENTIAL	1	FELDER - HIGHLY CONFIDENTIAL
2	Q. Just so we are not in terrible doubt,	2	(Exhibit 1, asset purchase agreement
3	we will find out whether it was the APA you looked		dated September 16, 2008 marked for
4	at.	4	identification, as of this date.)
5	A. OK.	5	MR. CARDEN: I think what who knows
6	Q. You don't know anything else about the	6	how we will end up with this, but we will
7	document that you saw online that had all the	7	make this Felder Exhibit 1. I think we will
8	handwriting on it that would help me determine	8	end up with depositions being taken
9	what it was you might have seen?	9	simultaneously at some point later in the
10		10	schedule, which will make it awkward if we
11	A. I remember it got sent to me, because	11	·
12	this concept of eight people, like they started	12	do it any other way.
13	calling it the elite eight, whatever document that		MR. STERN: What we had proposed, to
14	was in was getting sent around at the firm. So	13 14	avoid duplicate exhibits, we have a system
	that, whatever that document was	15	of numerical numbering sequential, and when
15	Q. That's the document?		we have multiple depositions, we just say
16	A. That would have been the one.	16	this deposition will take from 200 to 300.
17	Q. And you were one of the elite eight,	17	MR. CARDEN: That's fine.
18 19	correct?	18	MR. STERN: This is the first
	A. I wasn't aware that I was.	19	deposition. Why don't we start out that way
20	Q. The document didn't identify the	20	and see how it works.
21	eight?	21	MR. CARDEN: OK. So what we will do
22	A. I was never told that I	22	is, 1 through 25, if we get that far, will
23	Q. No, but when you read the document,	23	be Mr. Felder. OK, that's fine by me.
24	was your name in it?	24	So it is Exhibit 1. Not Felder 1,
25	A. No, I didn't see my name.	25	just Exhibit 1.
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1		1	
1 2	FELDER - HIGHLY CONFIDENTIAL	1	FELDER - HIGHLY CONFIDENTIAL
2	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document	2	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that
2 3	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder?	2 3	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of
2 3 4	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand	2 3 4	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which
2 3 4 5	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this	2 3 4 5	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion?
2 3 4 5 6	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this Q. This clearly was not the document that	2 3 4 5 6	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion? A. No. I heard they were going to
2 3 4 5 6 7	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this Q. This clearly was not the document that was the elite eight, I appreciate that. The	2 3 4 5 6 7	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion? A. No. I heard they were going to purchase the broker dealer, which I assumed had
2 3 4 5 6 7 8	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this Q. This clearly was not the document that was the elite eight, I appreciate that. The question is not whether this is that document, the	2 3 4 5 6 7 8	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion? A. No. I heard they were going to purchase the broker dealer, which I assumed had assets. I didn't know the exact numbers.
2 3 4 5 6 7 8 9	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this Q. This clearly was not the document that was the elite eight, I appreciate that. The question is not whether this is that document, the question is, have you ever seen this one before?	2 3 4 5 6 7 8 9	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion? A. No. I heard they were going to purchase the broker dealer, which I assumed had assets. I didn't know the exact numbers. Q. You never heard a number 70 billion?
2 3 4 5 6 7 8 9	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this Q. This clearly was not the document that was the elite eight, I appreciate that. The question is not whether this is that document, the question is, have you ever seen this one before? A. This document, no.	2 3 4 5 6 7 8 9	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion? A. No. I heard they were going to purchase the broker dealer, which I assumed had assets. I didn't know the exact numbers. Q. You never heard a number 70 billion? A. I don't recall.
2 3 4 5 6 7 8 9	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this Q. This clearly was not the document that was the elite eight, I appreciate that. The question is not whether this is that document, the question is, have you ever seen this one before? A. This document, no. Q. OK. I would like to direct your	2 3 4 5 6 7 8 9 10	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion? A. No. I heard they were going to purchase the broker dealer, which I assumed had assets. I didn't know the exact numbers. Q. You never heard a number 70 billion? A. I don't recall. Q. For that matter, you never heard a
2 3 4 5 6 7 8 9 10 11	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this Q. This clearly was not the document that was the elite eight, I appreciate that. The question is not whether this is that document, the question is, have you ever seen this one before? A. This document, no. Q. OK. I would like to direct your attention to page 6, and subparagraph D at the end	2 3 4 5 6 7 8 9 10 11	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion? A. No. I heard they were going to purchase the broker dealer, which I assumed had assets. I didn't know the exact numbers. Q. You never heard a number 70 billion? A. I don't recall. Q. For that matter, you never heard a number 72 billion?
2 3 4 5 6 7 8 9 10	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this Q. This clearly was not the document that was the elite eight, I appreciate that. The question is not whether this is that document, the question is, have you ever seen this one before? A. This document, no. Q. OK. I would like to direct your attention to page 6, and subparagraph D at the end there, do you see the reference to government	2 3 4 5 6 7 8 9 10 11 12 13	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion? A. No. I heard they were going to purchase the broker dealer, which I assumed had assets. I didn't know the exact numbers. Q. You never heard a number 70 billion? A. I don't recall. Q. For that matter, you never heard a number 72 billion? A. I don't know.
2 3 4 5 6 7 8 9 10 11 12 13	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this Q. This clearly was not the document that was the elite eight, I appreciate that. The question is not whether this is that document, the question is, have you ever seen this one before? A. This document, no. Q. OK. I would like to direct your attention to page 6, and subparagraph D at the end	2 3 4 5 6 7 8 9 10 11	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion? A. No. I heard they were going to purchase the broker dealer, which I assumed had assets. I didn't know the exact numbers. Q. You never heard a number 70 billion? A. I don't recall. Q. For that matter, you never heard a number 72 billion? A. I don't know. Q. Did you ever hear at any time a
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this Q. This clearly was not the document that was the elite eight, I appreciate that. The question is not whether this is that document, the question is, have you ever seen this one before? A. This document, no. Q. OK. I would like to direct your attention to page 6, and subparagraph D at the end there, do you see the reference to government securities approximating 70 billion? A. Yes. Q. Do you ever recall having heard from anybody that Barclays was going to purchase approximately 70 billion in government securities	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion? A. No. I heard they were going to purchase the broker dealer, which I assumed had assets. I didn't know the exact numbers. Q. You never heard a number 70 billion? A. I don't recall. Q. For that matter, you never heard a number 72 billion? A. I don't know. Q. Did you ever hear at any time a specific number of the value given to the assets that were purchased by Barclays from Lehman Brothers? A. After the fact after everything, I do recall Eric Bommensath, people throwing around
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this Q. This clearly was not the document that was the elite eight, I appreciate that. The question is not whether this is that document, the question is, have you ever seen this one before? A. This document, no. Q. OK. I would like to direct your attention to page 6, and subparagraph D at the end there, do you see the reference to government securities approximating 70 billion? A. Yes. Q. Do you ever recall having heard from anybody that Barclays was going to purchase approximately 70 billion in government securities from Lehman Brothers? MR. STERN: Objection to the form. Q. That's commercial paper, corporate	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion? A. No. I heard they were going to purchase the broker dealer, which I assumed had assets. I didn't know the exact numbers. Q. You never heard a number 70 billion? A. I don't recall. Q. For that matter, you never heard a number 72 billion? A. I don't know. Q. Did you ever hear at any time a specific number of the value given to the assets that were purchased by Barclays from Lehman Brothers? A. After the fact after everything, I do recall Eric Bommensath, people throwing around the number 50 billion afterwards. Q. So this is after the transaction
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this Q. This clearly was not the document that was the elite eight, I appreciate that. The question is not whether this is that document, the question is, have you ever seen this one before? A. This document, no. Q. OK. I would like to direct your attention to page 6, and subparagraph D at the end there, do you see the reference to government securities approximating 70 billion? A. Yes. Q. Do you ever recall having heard from anybody that Barclays was going to purchase approximately 70 billion in government securities from Lehman Brothers? MR. STERN: Objection to the form. Q. That's commercial paper, corporate debt. I'm just talking about	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion? A. No. I heard they were going to purchase the broker dealer, which I assumed had assets. I didn't know the exact numbers. Q. You never heard a number 70 billion? A. I don't recall. Q. For that matter, you never heard a number 72 billion? A. I don't know. Q. Did you ever hear at any time a specific number of the value given to the assets that were purchased by Barclays from Lehman Brothers? A. After the fact after everything, I do recall Eric Bommensath, people throwing around the number 50 billion afterwards. Q. So this is after the transaction closed, Mr I am having trouble with the name?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this Q. This clearly was not the document that was the elite eight, I appreciate that. The question is not whether this is that document, the question is, have you ever seen this one before? A. This document, no. Q. OK. I would like to direct your attention to page 6, and subparagraph D at the end there, do you see the reference to government securities approximating 70 billion? A. Yes. Q. Do you ever recall having heard from anybody that Barclays was going to purchase approximately 70 billion in government securities from Lehman Brothers? MR. STERN: Objection to the form. Q. That's commercial paper, corporate debt. I'm just talking about MR. STERN: What it says in section D.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion? A. No. I heard they were going to purchase the broker dealer, which I assumed had assets. I didn't know the exact numbers. Q. You never heard a number 70 billion? A. I don't recall. Q. For that matter, you never heard a number 72 billion? A. I don't know. Q. Did you ever hear at any time a specific number of the value given to the assets that were purchased by Barclays from Lehman Brothers? A. After the fact after everything, I do recall Eric Bommensath, people throwing around the number 50 billion afterwards. Q. So this is after the transaction closed, Mr I am having trouble with the name? A. Bommensath.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	FELDER - HIGHLY CONFIDENTIAL Q. Have you ever seen this document before, Mr. Felder? A. No, not the document I saw had hand notes on it. So this Q. This clearly was not the document that was the elite eight, I appreciate that. The question is not whether this is that document, the question is, have you ever seen this one before? A. This document, no. Q. OK. I would like to direct your attention to page 6, and subparagraph D at the end there, do you see the reference to government securities approximating 70 billion? A. Yes. Q. Do you ever recall having heard from anybody that Barclays was going to purchase approximately 70 billion in government securities from Lehman Brothers? MR. STERN: Objection to the form. Q. That's commercial paper, corporate debt. I'm just talking about MR. STERN: What it says in section D. Q. Whatever it says in section D. I will	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	FELDER - HIGHLY CONFIDENTIAL Did you ever hear from anyone that Barclays was going to purchase those types of securities identified in subparagraph D which approximated \$70 billion? A. No. I heard they were going to purchase the broker dealer, which I assumed had assets. I didn't know the exact numbers. Q. You never heard a number 70 billion? A. I don't recall. Q. For that matter, you never heard a number 72 billion? A. I don't know. Q. Did you ever hear at any time a specific number of the value given to the assets that were purchased by Barclays from Lehman Brothers? A. After the fact after everything, I do recall Eric Bommensath, people throwing around the number 50 billion afterwards. Q. So this is after the transaction closed, Mr I am having trouble with the name? A. Bommensath. Q. Bommensath.

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	Page 50		Page 51
1	FELDER - HIGHLY CONFIDENTIAL	1	FELDER - HIGHLY CONFIDENTIAL
2	number 50 billion.	2	50 billion is off in a different the 50 billion
3	Q. 50 billion of assets had been	3	is off in a different group basically.
4	purchased by Barclays?	4	Q. So the 50 billion in assets that had
5	A. I recall that.	5	been purchased by Barclays were not in your
6	Q. Did he say that to you personally?	6	group
7	A. I was I don't know if it was just	7	A. Right, exactly.
8	me and him or whether it was a group. I remember,	8	Q for the purposes of the sale?
9	I remember him saying we have 50 billion worth of	9	A. Exactly.
10	assets.	10	MR. STERN: Let him finish the
11	Q. And do you remember when he told you	11	question.
12	that?	12	Can I hear the question?
13	A. It was already over at 200 Park. It	13	(Record read)
14	was probably in October.	14	MR. STERN: Objection to the form.
15	Q. Do you remember what occasioned him to	15	You can answer.
16	have this conversation with you? Were you talking	16	A. They weren't in, they weren't in the
17	about the transaction?	17	credit business that I was going to be responsible
18	A. We were going through, we were going	18	for
19	through the, you know, set he wanted to set up	19	Q. Did he tell you where they were?
20	a series of reports to keep track of that the	20	A. It was in a group called P PMTG.
21	sales force was working on selling, once the firms	21	Q. Do you know who do you know what
22	were together, and I asked the question is there	22	that group is, what it does?
23	anything that, is there anything that now that we	23	A. I believe it is I believe PMTG
24	are up and running, that the sales force should be	24	stands for principal mortgage I don't know the
25	working on, and those he said, well, that, that	25	last two letters. So it was principal positions.
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	Page 52		Page 53
1	FELDER - HIGHLY CONFIDENTIAL	1	FELDER - HIGHLY CONFIDENTIAL
2	Q. Do you know who is head of that group		\$50 billion dollars assets
3	at Barclays?	3	MR. STERN: Objection, objection.
4	A. It is either Stephen King or I believe	4	A. Mr. Bommensath.
5	at the time it was David Martin. It was one	5	Q. I'm sorry, Mr. Bommensath.
6 7	David Martin is no longer with the firm. It is	6	MR. STERN: Objection to the form.
8	one of those two people, and it might roll up into	8	Q. Before the conversation with Bommensath in which he told you there had been
9	John Mann now. I don't know the exact setup. Q. Do you have an understanding of what	9	\$50 billion of assets purchased by Barclays, did
10	that group at Barclays does?	10	you have any conversations with anyone in which
11	A. Not with precision. I know that they	11	the value of the assets purchased by Barclays was
12	have assets and that they and that they trade	12	discussed?
13	in the securities.	13	A. No, just those the meetings that I
14	Q. Am I right in understanding what you	14	had mentioned over the weekend.
15	are saying is that that group deals with	15	Q. Let's make this Exhibit 2.
16	proprietary positions at Barclays?	16	(Exhibit 2, e-mail with attachment
17	A. I don't know if it was proprietary. I	17	dated September 18, 2008 marked for
18	have only heard the word "principal."	18	identification, as of this date.)
19	Q. So you don't have an understanding of	19	Q. Have you ever seen Exhibit 2 before,
20	whether that's a category of investments, or	20	Mr. Felder? Let me rephrase.
21	pardon me, a category of assets that are	21	Have you ever seen any part of
22	considered proprietary assets to Barclays?	22	Exhibit 2 before, if you haven't seen the whole?
23	A. I don't know how they categorize it.	23	A. No, I don't recall seeing this.
24	Q. Before that conversation with	24	Q. Have you ever seen a document like
25	Mr. Del Missier in which he said there had been	25	page 2? This chart, summary chart?
1	TSG Reporting - Worldwide (877) 702-9580		TSG Reporting - Worldwide (877) 702-9580

Pg 117 of 194 Page 54 Page 55 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL A. Yeah. If it is corporate credit risk 2 A. I would have summary risk reports for 2 3 my business -- for the businesses. But it was 3 and bonds, then it would. But I don't know what 4 4 credit. We hadn't gotten to the point in fixed corporate obligations -- I don't know what that 5 income where -- because it was only four days. 5 phrase means. б 6 Q. Which of the areas identified on Q. OK. 7 page 2, if you could tell me, were the areas for 7 A. A portion of derivatives, if it was 8 which you had responsibility, which asset classes? 8 within fixed income. 9 9 A. At what -- when? O. OK. 10 10 The week of September 15, or the last A. And this would have been in my role as days of the week before, if you weren't really 11 cohead of fixed income if I had been told what I 11 12 doing anything the 15th. Let me say it another would have been responsible for. Governments and 12 13 way. 13 agencies and mortgages and mortgage backs. 14 Which of these asset classes were, 14 Q. Do you ever remember participating in 15 15 given your understanding of what position you were any effort to create a balance sheet for just LBI 16 to have starting on September 8, would have been 16 itself? 17 within your areas of responsibility? 17 A. No. 18 A. Total CDs and nonmoney market. 18 Q. And did you ever do any kind of 19 calculations to determine the value, the marks of 19 O. OK. the positions if you will, that were within your 20 20 A. I don't know what the second term 21 means with "spot." If it is just corporate bonds, 21 area of responsibility? 22 22 then it would, but I don't know what the term A. No. 23 23 "spot" ---Q. And do you know if there at page 2 of 24 Q. Are you talking about total corp. this exhibit is, in fact, an effort to do just 25 obligations and spot, that category? that as to certain aspects of the portfolio? TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 56 Page 57 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 2 A. I don't know. Q. Now, did there ever come a time, Mr. Felder, where you were asked to help prepare 3 Q. Do you recognize the spreadsheets that 3 4 follow page 2 as being listings of the investments 4 Mr. McDade for his testimony on Friday before the 5 or the securities within the various asset classes 5 bankruptcy court? and the summary page 2? 6 6 A. No. MR. STERN: Objection to the form. 7 7 Q. Did there come a time when you were A. It looks like a list of securities to 8 8 asked to provide a fire sale liquidation price for 9 9 the positions within your area of responsibility? me. A. No. 10 Q. And the valuations that are provided 10 would have been provided by the various traders on (Exhibit 3, document Bates stamped 11 11 12 the desks in question, correct, whoever was 12 1029780 marked for identification, as of trading these particular securities? 13 this date.) 13 14 A. I don't know what the data -- where 14 Q. Mr. Felder, I show you what has been 15 this -- where the data from this report would have marked as Exhibit 3, which is an e-mail from 16 come from. 16 Mr. Kirk to some unknown address. But it has with 17 17 Q. Could the valuations have come from it underneath an e-mail that was sent from -- by 18 anyone other than the traders? 18 Mr. Flores to a group of people including yourself MR. STERN: Objection to the form. 19 19 on Thursday evening at 8:40. 20 A. I don't know. 20 Do you recall having gotten this 21 Q. And in any event, you didn't provide 21 e-mail, sir? any valuations? 22 A. I don't. 22

23

24

23

24

25

A. No.

Q. To any of these positions?

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Q. Do you have an understanding of what

is meant by the phrase a fire sale liquidation of

the securities that are being transferred to TSG Reporting - Worldwide (877) 702-9580

Page 58 Page 59 FELDER - HIGHLY CONFIDENTIAL FELDER - HIGHLY CONFIDENTIAL 2 **Barclays?** 2 be high quality. But if it was subordinated, it 3 3 MR. STERN: Objection to the form. might not be. 4 Can you repeat the question. 4 Q. Anything else that would be very high 5 5 (Record read) grade that would be within the asset classes that 6 A. My understanding of the term "fire 6 were in your area of responsibility, other than 7 sale" would be someone who had to sell securities 7 those two? 8 in a very short time frame. 8 A. Investment grade corporate bonds would 9 9 Q. Most of the securities in your area of be high quality. And then I would assume that responsibility were very high grade, were they 10 there is some very high quality mortgage paper, 10 11 not? 11 but I'm not a mortgage expert. 12 12 Q. The sale of those kinds of high-grade A. In credit, there was high grade, there 13 13 was high yield, there was distressed. There were securities, does it ever -- strike that. 14 different types of securities within credit. 14 The markets for those very high grade Q. Would you just go back to Exhibit 2 15 15 securities that you just articulated are quite 16 for a moment and look at the summary chart. The 16 large, are they not? listing there for total governments and agencies 17 17 A. The aggregate markets, yes. at 37.6 billion long, do you see that? 18 18 Q. And the amounts that are listed here 19 19 of 37 billion, if that includes all of them, A. 20 Those are very high grade, are they 20 that's not a very big number in terms of the O. 21 not? 21 overall market in those securities, is it? A. I don't know what's in there, but if 22 22 A. No. 23 it is -- if it was U.S. Government bonds, that 23 O. The market can easily absorb those would be very high grade. If it was senior agency 24 sales without changing the market, couldn't it? paper, that would be very high grade, that would 25 A. It would depend on -- it would depend TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 60 Page 61 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 2 on the securities. If there were ten-year It really is -- I have got to rephrase 3 Treasuries, the market could withstand that, yes. 3 it. 4 Q. Could you contemplate a situation in 4 I'm trying to understand, if you can 5 which there would ever be a fire sale price for 5 assist me, Mr. Felder, what possibly could have 6 the sale of ten-year securities -- ten-year 6 been meant by that "fire sale liquidation" phrase 7 Treasuries? I mean you would have to actually 7 on that Thursday night in this memo. 8 sell it for a lower price because the market 8 MR. STERN: Objection to the form. 9 couldn't bear it? 9 A. I can only make a -- I can only make A. There have been times in history where an assumption, if I had -- what I would think, not 10 10 11 even the government market had has been very 11 what the writer meant. 12 illiquid, like around long-term capital 12 Q. Of course. Tell me what you think. management, for example. 13 You -- I mean after all, you presumably were --13 14 Q. OK. That wasn't the case on the week 14 let me start again. 15 of September 15, though, was it? 15 Someone asked vou to make this 16 A. The markets were certainly very 16 assumption for the purposes of valuing a portion 17 volatile, given everything that happened to of the portfolio for which you had responsibility, 17 18 Lehman. But government bonds were trading 18 correct? That's what this is asking you for? MR. CERESNY: Objection. 19 liquidly, I believe. 19 MR. STERN: Objection to the form. 20 Q. Do you have any understanding or 20 21 recollection of what was meant then in connection 21 What's the question? with the phrase "fire sale liquidation" when -- I (Record read) 22 22 Q. Let me be more precise. Mr. Daniel 23 know you don't remember getting the e-mail, I'm 23 24 not trying to suggest that. 24 Flores asked you on Thursday evening, 25 MR. STERN: Can I hear the question. September 18, to assume a fire sale scenario for TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580

Page 62 Page 63 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 2 the purposes of valuing the portfolio for which Q. Let me ask it this way. Of the asset 3 you had responsibility, did he not? 3 classes for which you had responsibility on Friday A. That's what this e-mail looks like it 4 4 morning, September 19, which, if any, would have 5 had a reduction in their value as a consequence of requested. 5 6 Q. So what you thought "fire sale 6 having to sell them instantaneously, given the 7 liquidation" meant means something to me. How 7 quantities involved and the asset classes would you have understood this when you received 8 involved? it? Even if you don't recall now having gotten 9 A. I don't -- I can really talk about it, what would be your assumption as to what was 10 10 credit. 11 meant? 11 Q. Talk about what you can talk about, 12 12 MR. STERN: Objection to the form. I Mr. Felder. 13 13 A. I think credit, credit, there would be think he has already answered that. 14 But you can answer again. 14 a credit -- the liquidity in the credit market is 15 A. I would say it would mean what would 15 substantially lower than the government bond the price be for selling the securities in a very market. So that there would be, in my opinion, a 16 16 short time frame. 17 discount to move a block of corporate credit in an 17 18 18 Q. What time frame? instantaneous fashion. O. Without regard to the quantity? 19 A. Basically instantaneously -- like --19 close to instantaneously. MR. STERN: Objection. 20 20 21 Q. Would the need to sell U.S. Treasuries 21 Have you finished your answer? instantaneously, let's call it on Friday morning, I mean there was a question pending 22 22 the 19th, have resulted in significantly or any 23 and an answer being given. Can I get the 24 lower price for the Treasuries in your mind? 24 question? 25 25 A. I'm not a Treasury expert. (Record read) TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 64 Page 65 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 2 THE WITNESS: What was my answer? in a diminution in their value in the market? 3 3 MR. STERN: Objection to the form. (Record read) 4 MR. STERN: Did you finish? 4 A. I'm really only comfortable talking THE WITNESS: Yes, I am finished. 5 5 about credit, because that's the market I knew. 6 6 Q. Finished? OK. Q. OK. But you did have responsibility 7 Look at Exhibit 2, if you will, on the for derivatives, right? In the fixed income area. 7 8 8 summary chart that has been helpful to us in the A. For credit derivatives. 9 9 past. Can you tell us which securities to which O. Credit derivatives? you were just referring were corporate credits? 10 10 A. Correct. 11 11 A. I don't know what these definitions Q. Would they have had significant 12 12 diminution in their value on Friday morning as a are. 13 13 Q. OK. consequence of the need to sell them 14 A. As I have said. So if the definition 14 instantaneously? A. They would trade like a credit 15 of this second bucket, corporate obligations, 15 would be corporate credit, then I would say that 16 product, so there would be -- to move a big block 16 that would -- that would be an example. of CDS would definitely create -- you would need 17 17 18 Q. You are referring now to the second 18 some discount. entry there in the column "Total Corporate 19 Q. What would you mean by a big block? 19 A. I would say north of 2 billion. Obligations and Spot," which shows a long position 20 21 of 4 -- about 4.9 billion? 21 Q. OK. What kind of discount would you 22 22 A. That's what it looks like. give it? 23 23 O. Are there any other securities on this MR. STERN: Objection to the form. 24 chart that you think would, if they had to be sold A. It would depend on the names that were instantaneously on Friday morning, have resulted 25 in the portfolio. TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580

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Q. Can you give me a range? I'm just trying to get a feel, half a percent, 20 percent? I'm trying to get a feel for what the discount would be in your mind.

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A. It would depend -- the market trades on spread, so it would depend on which the specific credits were and then what the aggregate size was.

So, for example, financials were under a tremendous amount of pressure at this point. If it was an entire financial credit portfolio, that would be very difficult to move.

Q. Would your answer be different if they were exchange traded? And by that I mean would 15 the discount be either nonexistent or small in the disposition of an exchange-traded derivative on an 17 instantaneous basis the morning of September 19? 18

A. If it was a liquid product traded on -- if there was more liquidity in the product based on it being on an exchange, then the answer would be yes.

Q. Yes, that there would be --

A. If the product were more liquid because it was on an exchange, then a discount

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would be lower if there was more liquidity because of that.

Q. Why would there be a discount at all on -- you would either be able to sell it on the exchange or you couldn't. Why would there be a discount in any respect with regard to the exchange-traded derivative?

A. What I mean by discount, if you went to go on -- in any market, there is a size on let's say the bid or the offer, and if you go to transact, when you're done transacting, the price isn't necessarily at the same spot that you started.

Q. OK.

A. So I would mean the average price that you ultimately sold compared to where it started could be different, even on an exchange.

Q. OK, OK. Let's go back to our chart here for a moment. You covered corporate obligations and you covered the derivatives. You sav vou don't --

MR. STERN: Objection to the form.

Q. You say you don't have specific or personal knowledge of the Treasuries, but the

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2 That to put a theoretical price on a pool of assets that would be a worst-case 4 scenario.

O. But you never recall having done that?

A.

Q. Or having talked to Mr. McDade or Mr. Flores or Mr. Kirk about having done so?

Q. Did you ever hear anybody else at the firm had done so with regard to the portfolios for which they had responsibility?

A. I recall getting a -- I recall getting an e-mail around the -- around mortgages and around a discount, a discount to the market price for mortgages, and I believe I forwarded it to Mike Gelband. I do remember that.

Q. From whom did you get it?

A. I don't remember. I would just have to assume that Charlie Spero would have been on it because he ran mortgages.

Q. Did you ever get an explanation for why that -- strike that.

24 OK. Let's soldier on here with regard 25 to Thursday night.

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Treasuries is a huge market and the -- clearly

there would not be any meaningful discount with

regard to the disposition of those on an emergency 5 basis, would there?

6 A. I would say for on-the-run Treasuries,

I wouldn't think there would be, but I assume

8 there are some Treasury securities that have less

9 liquidity than others. But in aggregate the U.S.

Treasury market is a very, very liquid market. 10

11 Q. Let me ask it this way. Did there 12 ever come a time, Mr. Felder, where you asked your traders to price the securities in Exhibit 2 as 13

14 though they were going to be sold on a fire sale

15 basis on Friday, September 19?

A. I don't recall doing that.

Q. Do you recall having been asked by 17 18 anybody to do that?

A. I don't, because I don't recall that 19 20 e-mail.

Q. Is there -- do you have any

explanation for me at all as to why anybody would 22

23 have wanted you to do that?

A. I can make an assumption.

25 Q. Tell me.

Pg 121 of 194 Page 70 Page 71 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 1 2 2 that Exhibit 3, which is in Greenwich Mean Time, MR. STERN: How are we doing in terms 3 of taking a break? It is about 11. Are you 3 with the hour difference then I can tell you is 4 4 four hours. Do you remember that time period? at a point --5 5 There's about a week or two in the year where the MR. CARDEN: Yeah, maybe in about 6 time change is four hours. We are in that period 6 15 minutes. Is that OK? 7 7 THE WITNESS: I'm fine. right here. 8 Q. You told me you don't remember getting 8 So to start again, I will tell you 9 Exhibit 3, which was Thursday night, right? Do 9 that Exhibit 3 is 8:41 in the evening on Thursday. you remember whether you were in the office on 10 10 Thursday evening, the 18th? 11 Q. And you can observe -- actually this 11 A. I don't. 12 is in Greenwich Mean Time as well, but Exhibit 2 12 13 Q. You note in Exhibit 3, it references a 13 is at 7:17. So it is within an hour or so, the list of top 100 positions, which is going to be 14 same time period. Do you see that? MR. STERN: You are asking if he sees left on the desks of each of the people to whom 15 15 16 the e-mail is addressed. Do you see that? 16 what? Do you recognize or can you tell me if 17 17 Q. Well, let me ask it this way. Do you Exhibit 2 is in fact a list of the 100 largest 18 know, Mr. Felder, whether Exhibit 2 is the list of 18 securities in the area for which you had securities, your portion of it, that was left on 19 responsibility? 20 your desk or was going to be left on your desk 20 21 A. I -- only the cover e-mail says, "Here 21 pursuant to the paragraph in Exhibit 3? are the position level details for the top hundred A. I know that this says, "Here are 22 22 longs and shorts," so I can only assume that this 23 position level details for top hundred longs and 23 24 document is that. 24 shorts," so I would assume that's what this is. 25 25 Q. That's what I had done, but you don't Q. I will draw your attention to the fact TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 72 Page 73 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 1 2 2 have a recollection of it? Q. And you have no recollection of having 3 asked for anybody to assist you in responding to A. No. 4 Q. And you don't remember having sat at 4 the request in Exhibit 3 then? your desk at Thursday evening and have somebody 5 A. I don't recall doing that. 5 come in and say, here is the hundred largest 6 O. It is a total blank? 6 A. I don't remember doing it. positions in your area, go value them? 7 7 8 8 A. No, no. Q. OK. Do you remember anything about 9 9 Q. And you have no recollection of having Friday morning, the 19th, where you were, what you told anyone in your area to go do that? were doing? 10 10 11 11 A. I believe I had breakfast with Tom A. No. 12 Q. Would there have been anyone else in 12 Montag that morning. Q. Who is Tom Montag? your area that would have done that for you if you 13 13 14 weren't available? 14 A. He runs capital markets at Merrill A. The people below me, there is always a 15 15 Lynch. Or Merrill Lynch, B of A. chance that someone like Alex would have reached Q. Why were you having breakfast with 16 16 out to someone directly if he didn't get me and 17 17 him? 18 there was something that was time sensitive. 18 A. He expressed interest in having me Q. You carry a BlackBerry, right? 19 come and run the credit business over there. 19 Q. Now, by Friday morning, the 19th, had 20 20 you received a contract from Barclays? 21 Q. So there is no doubt in your mind, is 21 there, that you would have seen Exhibit 3 on or 22 A. I believe I got a draft on Friday, but 22 about the time it was sent to you, right? I don't believe it was Friday morning. I don't 23 23 24 24 A. If I was looking at my BlackBerry, I recall exactly.

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Q. Do you recall having gotten a draft

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would have seen it.

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Page 83 Page 82 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 BCI-EX70957 marked for identification, as of 2 at 10:51 a.m. with attachment marked for 3 3 this date.) identification, as of this date.) Q. Mr. Felder, showing you what has been 4 4 Q. Have you ever seen Exhibit 8 before? 5 5 marked as Exhibit 7, which is an e-mail from 6 Mr. Lowitt to three people, I think, including (Exhibit 9, e-mail dated September 19, 6 7 7 yourself. Do you see that? 2008 at 2:06 p.m. with attachment marked for 8 A. Yes. 8 identification, as of this date.) 9 9 Q. Maybe that's four people. Q. Mr. Felder, showing you what has been marked as Exhibit 9, which is an e-mail from 10 Do you recall having gotten this 10 11 Mr. Kirk to, again, an address that is 11 e-mail? 12 12 unrecognizable, but it has attached to it an A. No, not specifically. 13 Q. Well, do you remember generally having 13 e-mail from Mr. McGarvey to a group of people 14 met with anybody at Barclays, now that you have 14 including yourself on Friday morning at seen this, on September 19th, to talk about 15 10 o'clock. 15 16 positions and marks? 16 Do you remember having gotten this A. No. 17 17 e-mail? 18 18 A. I don't. Q. Do you remember having received, in Q. And I take it you have no recollection 19 the early morning hours of September 19 and into 19 the morning, spreadsheets reflecting positions in 20 of having gotten the attachment? 20 21 areas for which you had responsibility? 21 A. Correct. 22 Q. And this CD and MM pricing, CD and MM, 22 A. Not specifically. 23 Q. Let's mark a couple of them here. 23 that would be in your area, right? That would be 24 Mark this as Exhibit 8. 24 money market and CDs. That was something that you identified previously as being something that was 25 (Exhibit 8, e-mail September 19, 2008 TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 84 Page 85 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 in fixed income? 2 would have been a mortgage person. 3 Q. Charlie? 3 A. That would have been in fixed income. 4 Q. Does this document assist you in any 4 A. Charlie Spero. 5 Kaushik would have been rates, respect in recalling what was taking place on 5 Friday morning with regard to the valuation of 6 commodities and FX. John Coughlin would have been 6 7 positions that were within your area of repo or anything short term, and Mike Gelband and 8 responsibility? Alex would have been the other two. 8 9 9 A. No. I don't recall being in the Q. What about corporates? Who would have --10 10 meeting. 11 Q. And it is still your recollection --11 A. Anything for corporates, for 12 strike that. 12 corporates, it would have been me. 13 Q. So pricing for any corporate 13 It is still the fact that you don't 14 recall having met with anybody from Barclays about 14 obligations would have been something that you 15 pricing of any of these securities? 15 would have been most familiar with as opposed to 16 16 A. I don't recall. the people vou just mentioned? 17 Q. Going back to Exhibit 7 for just a 17 A. Yes. If they asked for a price on an 18 moment. Would there have been anyone else in --18 investment grade corporate bond that -- they would among Mr. Amin and Mr. Donini and Mr. Spero who 19 19 have come to me or someone below me. would have understood or known the process of 20 Q. What was happening in -- let's take it 21 providing valuations for assets within your area? 21 a step at a time. If you go back to, I think it A. Hyung Lee was the cohead of fixed 22 22 was Exhibit 2, just as a frame of reference, this 23 income, and then within the different asset 23 summary of asset classes, is it possible for you 24 classes, Jim Seery or Fred Orlan would have been a to assist me as to what was going on in the market 24 high yield or leveraged loan person. Charlie in a general respect from, say, the end of the

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FELDER - HIGHLY CONFIDENTIAL week of September 15 for each of these asset classes?

A. I could really only talk to the credit side.

Q. OK, give me that.

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7 A. Spreads were widening significantly on 8 the back of the Lehman bankruptcy, specifically 9 within financials.

10 We weren't -- we weren't trading so I 11 could -- because we were bankrupt, so there 12 weren't -- you could only just watch your 13 Bloomberg screen, so obviously the equity markets were going down a lot. There was a lot of

15 volatility, and in general, spreads were significantly wider. 16 17

Q. No way for you to quantify that in any general respect or -- did it change through the week? Did it spike, did it flatten, did it --

A. No. I -- I don't remember the exact 20 21 numbers on things, but there were some things that 22 were north of a hundred basis points wider over 23 the course of that week.

24 Q. You said Coughlin was responsible for 25 repos? I think that's what you said in passing.

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- A. He ran financing for fixed income.
- 3 Q. Let's go back to Tuesday. We were 4 talking about Tuesday, September 16, and what you 5 were doing that day.

If you had come into the office, I would like you to tell me as best you can, just try to walk through the week as to what else you were doing on that Tuesday and the Wednesday and Thursday as well.

A. On the Tuesday, there was the meeting 12 with, I believe it was Tuesday, with Jerry and --

Q. That's where we left you, we left you with Mr. Diamond and Mr. Del Missier.

A. Right.

16 I recall that most of the rest of the 17 week was trying to keep the team together and 18 talking to all the individual people within the 19 credit business who were out interviewing and 20 getting job offers to try to keep the team 21 together.

Q. Were you meeting with Barclays during that time period on what I'll characterize as, you know, the asset classes for which you had responsibility or anything else? Other than your

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FELDER - HIGHLY CONFIDENTIAL compensation.

A. Yeah. I had coffee with Eric

Bommensath, I don't remember which day it was, it was either -- I believe it was Tuesday or

Wednesday, who was going to be my boss. And we

started -- he wanted the names of what I deemed to be the top people within the credit space. So we

9 spent time going through that and just talking 10 about the business overall.

Away from that, I don't recall any specific meetings with Barclays.

O. Did you meet with any lawyers that week? Going on from Tuesday or the Tuesday meeting with Mr. Diamond, after that --

A. Right.

Q. -- did you meet with any lawyers?

A. No.

19 Q. Did you ever meet privately with 20 Mr. McDade?

A. I don't recall meeting with him 21 22 privately.

23 Q. Did you ever have a private meeting with Mr. Kirk concerning the transaction and, you know, what had been agreed upon by the parties?

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A. No.

3 Q. What about Mr. Kelly? Did you have 4 any conversation with Mr. Kelly that week? Martin 5 Kelly?

6 A. Martin -- no.

7 Q. Do you even know Martin Kelly?

A. I know the name.

Q. Who do you know him to be?

10 A. I knew him to be sort of a -- I don't

11 know what his exact function is, but I knew him to

12 be sort of a right-hand person to the CFO, to Ian.

13 But I couldn't tell you exactly what his function 14 is.

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Q. Did you ever tell or write to anybody that Barclays was cherry-picking assets?

A. I don't recall doing that.

Q. Do you recall ever having written anybody to the effect that Barclays was choosing the assets which they wanted to purchase?

21 A. I did think that Barclays was choosing 22 and pricing assets. That was just the 23 impression -- that was the impression.

Q. What was that impression based on?

I guess I remember Mike Keegan at --TSG Reporting - Worldwide (877) 702-9580

Page 90 Page 91 FELDER - HIGHLY CONFIDENTIAL FELDER - HIGHLY CONFIDENTIAL 1 1 2 2 in one of the meetings, I think it was, I guess Q. But you also knew during that week, 3 3 that Monday. did you not, that Barclays was picking the assets 4 Q. Monday, the 15th? they wanted to purchase? 4 5 A. I knew they were looking at the -- at 5 A. I believe. Just the way he asked 6 about -- on the corporate side, I remember him 6 all the different assets and forming opinions on asking about auction rate securities and saying 7 7 them. like what -- like are you comfortable with these, 8 (Exhibit 10, e-mail dated September 9 and I remember saying, yes, we were comfortable 17, 2008 at 12:34 p.m. marked for 9 10 identification, as of this date.) 10 with them. 11 Q. Anything else? 11 Q. Mr. Felder, I show you what has been marked as Exhibit 10. Midway on the first page. 12 A. No, that's what I -- I remember that. 12 13 Q. It may be my confusion, I apologize if 13 there is an e-mail from you to a collection of 14 it is, but I thought I understood you to say that people where you are stating that the Barclays you thought that Barclays was buying the entire folks picked the assets and recall them saying 15 15 16 broker dealer. How does that square with the fact 16 they didn't want the auctions carries, but I 17 that they are selecting assets to purchase? I 17 wasn't in the meeting. don't understand how those things are consistent. 18 Do you see that? 18 Maybe they are, but I don't understand. 19 19 A. Um-hm. 20 MR. STERN: Objection to the form. 20 Q. You mentioned about the auction rates 21 A. I don't know that -- I just know what 21 in your conversation. I had heard about what the transaction was, that 22 22 A. Because I remember -- yes. they were looking at buying the broker dealer. I 23 Q. Does this document refresh your don't know the specifics of how a transaction like 24 recollection to any extent that Barclays was 25 this would occur. interested in only purchasing certain assets of TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 92 Page 93 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 2 asking, you know, what do you think of these Lehman Brothers as opposed to the entire broker 3 securities at these prices? 3 dealer? 4 4 MR. STERN: I think you should take a Q. OK. 5 A. And I recall saying to him that I 5 chance to read the document. 6 6 think you're going to get -- ultimately people THE WITNESS: OK. would get their money back on these securities 7 A. What was the question? 8 8 from -- because they were at a discount. They (Record read) 9 9 weren't marked at par anymore, given what went on A. I just remember them asking opinions on things which led me to believe that a decision in that market. But that over time, those assets 10 10 process was being made. 11 would -- you would ultimately get your money back. 11 12 12 Q. OK. Do you remember them asking you O. Were the auction rates within your area of responsibility, within fixed income? about anything or speaking about anything other 13 13 14 than auction rates? 14 A. Yes. 15 A. That was all I recall being asked. 15 Q. And you know they didn't move to 16 Q. Did you ever have a conversation with 16 Barclays, right? anybody at Barclays about the valuations of any of 17 17 MR. STERN: Objection, objection to 18 the positions or asset classes in the area of your 18 19 19 responsibility? A. I don't know that they didn't move to 20 A. What do you mean by value -- by 20 Barclays. 21 valuation? 21 Q. The conversation that you had with 22 Q. Marks. 22 Mr. Keegan on Monday about -- you think it was A. Like where are things marked? Around 23 23 Monday -- about the auction rates, was this a 24 the auctions, based on the -- where the prices 24 face-to-face meeting that you had with him? were, I remember them -- I remember Mike Keegan 25 A. Yes. It was in that -- it was up on

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Page 94 Page 95 FELDER - HIGHLY CONFIDENTIAL FELDER - HIGHLY CONFIDENTIAL 1 1 2 32. within any area of fixed income during the week of 3 3 September 15 to provide you marks on any Q. In that room where you were escorting 4 some people in and occasionally staying yourself? 4 5 A. I don't recall specifically asking for A. Correct. 5 6 O. Do you recall having spoken about any marks from people. 6 7 Q. Did you ever instruct any traders 7 other asset classes or any other types of assets 8 other than auction rates in that room to Barclays 8 within your area of responsibility to mark down 9 9 people with regard to marks? any assets within the fixed income area? 10 A. No. A. I don't recall instructing anyone to 10 11 Q. Were you aware during the week that 11 mark. there was a real interest or focus on the marks 12 12 Q. Can you tell me who would have had the 13 that were being placed on the asset classes, or 13 conversation with the trader concerning the 14 the positions rather, in your area of 14 mortgages that you have seen previously in terms responsibility? 15 of providing marks for those? 15 16 A. Well, based on -- based on, for 16 A. It would have gone through Charlie example, that mortgage e-mail, there was focus --17 17 Spero. 18 the -- I don't want there to be a disconnect 18 Q. OK. Did you ever have a conversation between my technical area of responsibility, given 19 with anyone at Lehman Brothers, Mr. Felder, about 19 a discount being provided to Barclays on its the job that I had gotten four days before, and 20 20 21 what I -- what I really had a knowledge of, which 21 purchase of Lehman assets? was the credit piece. So I -- I did have the 22 A. I don't recall any specific 22 23 23 sense that there was focus on the marks of conversations. 24 positions, but they weren't my areas of expertise. 24 Q. Did you ever hear generally that Barclays had been provided a discount in its 25 Q. Did you ever instruct any traders 25 TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 97 Page 96 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 2 purchase of Lehman assets? A. No. What do you mean by analyst? 3 A. Well, that mortgage e-mail, for 3 Q. Not analysts, they were investors. It 4 example, would give that indication, so that would 4 was an investor call and a collection -- I don't 5 be an example of something that --5 know who got access to the call. All I've seen is 6 Q. OK, thank you for that. Other than 6 a transcript, there was an investor call --7 the indication and the specific instance 7 A. No. 8 8 concerning the mortgages, did you ever hear of Q. -- of some kind, and my question is, 9 any, I'll call it global discount given to 9 were you on that call? **Barclays for -- in purchase of the Lehman assets?** 10 10 A. No. 11 A. No, I don't recall hearing about that. 11 MR. STERN: Just so the record is 12 12 Q. Did you ever read anywhere or hear clear. I think in one of the previous from anyone that Barclays had purchased certain 13 13 answers Mr. Felder referred to "that 14 valuation or value of Lehman assets for a 14 mortgage e-mail," and I believe he was 15 discount? 15 referring to Exhibit 6, just to avoid any A. No, not specifically. 16 16 confusion. 17 Q. Were you aware that on Tuesday 17 MR. CARDEN: Let's mark this 18 morning, Mr. Diamond and I think others at 18 Exhibit 11. 19 Barclays had an analyst conversation, telephone 19 (Exhibit 11, document Bates stamped 20 conversation? 20 10284073 marked for identification, as of 21 A. Analysts? 21 this date.) Q. Yeah. They had a telephone 22 22 O. Have you seen Exhibit 11 before, conversation with various people? 23 23 Mr. Felder? A. No. 24 A. I believe Dan was the one who was 2.4 25 sending out the updates. He was a lawyer, so he Q. You weren't on it, in any event? 25 TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580

Page 102 Page 103 1 FELDER - HIGHLY CONFIDENTIAL FELDER - HIGHLY CONFIDENTIAL 1 2 2 the evening, or 5 rather. No. 10. Q. Did you have any conversations with 3 Do you recall having gotten this? 3 anybody about needing to shrink the matched book 4 during the week of September 15? 4 MR. STERN: Let's read it first. 5 5 A. I don't recall it specifically. A. Not that I recall. 6 Q. What did you mean when you wrote here, 6 Q. Well, do you recall generally there "What about the line from BACR," that's Barclays 7 being any conversation about the need to shrink 7 8 the matched book? 8 credit? Is that what that is supposed to mean? 9 9 A. I don't recall that. I recall the --A. I would assume that's Barclays. 10 10 I recall instructions from Ian to make sure that Q. What did you mean by that? the traders weren't doing things that sent cash 11 A. I had -- I -- guess I was asking 11 whether there was -- whether Barclays was going to out of the firm. I remember that as a broad 12 12 13 instruction that he gave. 13 finance Lehman, whether that was --14 Q. Do you have an understanding of what 14 Q. Were you aware at or about this time 15 that the Fed had done a repo with Lehman? 15 is meant by shrinking the matched book in this 16 e-mail from Mr. Lowitt? 16 A. No. A. A matched book is a repo book where it 17 Q. So I take it you're not aware of 17 18 is matched, so there are two sides to it. So if whether Barclays was going to take over the Fed's 18 19 position in connection with that repo? you shrunk a matched book, you would eliminate 20 A. No, not aware of that. both sides and then the aggregate size would be 20 21 21 smaller. MR. CARDEN: I'm done. 22 22 Q. Do you have any memory at all as to why there was a need in his mind to shrink the 23 23 24 matched book? 24 25 25 A. No. TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 105 Page 104 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 **EXAMINATION BY** 2 Q. Did you speak with Mr. Lowitt or Mr. Tonucci about anything related to the Federal 3 3 MS. TAGGART: 4 Q. My name is Erica Taggart. I represent 4 Reserve at this time? 5 the creditors committee. 5 A. No. Not that I recall. I have some question, mostly directed 6 Q. Did you speak to anyone related to the 6 repurchase agreement related to the Federal 7 to finding out who might have some of the 7 8 Reserve? 8 information you didn't know. 9 9 Did you work at all -- I believe A. No. Mr. Carden asked you that you weren't involved in 10 10 Q. Now, I understand that you didn't any repurchase agreement with the Federal Reserve, 11 prepare any witnesses for the sale hearing; is 11 12 right? 12 that correct? 13 13 A. I am sorry, prepare any? A. Correct. 14 Q. Do you know anyone who was involved 14 Q. Witnesses for the sale hearing that 15 from Lehman in dealing with the Federal Reserve in 15 happened on September 19. connection with the primary dealer credit 16 16 A. No. facility? 17 17 Q. Do you know anyone at Lehman who did 18 A. I can only make an assumption as to 18 prepare anyone for the sale hearing? 19 19 who it would be. 20 Q. OK. Who do you know that that might 20 Q. Did you ever have any interaction with fall under their responsibilities at Lehman? 21 JP Morgan during the week of September 15? 21 A. I would think it would fall within the 22 22 23 Treasury function. So either Ian Lowitt or Paolo 23 Q. Do you know who at Lehman did have any Tonucci, who would be the treasurer. Those would interaction with JP Morgan at this time? 24 A. I would only be assuming again. I can be the two people. 25 TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580

Page 106 Page 107 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 1 2 2 give you a list of people who it might be, but I information to the different department heads. 3 don't know. 3 You deal with the credit and fixed income. Is there anyone else that you know of who during this 4 Q. Who are the people at Lehman that it 4 time was collecting information from traders about was your understanding within their 5 5 6 responsibilities would be working with JP Morgan 6 valuation of assets that might go to Barclays? A. The -- oh, specifically -- no, not 7 prior to the sale transaction? 7 8 A. I would think it would be Ian and 8 specifically. 9 9 Q. And it is my understanding you weren't Paolo, again. involved in the negotiation of any of the 10 Q. Besides the people that you mentioned 10 earlier today, do you know anyone else at Lehman 11 contracts that related to the sale of assets to 11 who was involved in valuing any assets or 12 12 Barclays, correct? 13 securities that became part of the sales 13 A. Correct. 14 transaction? 14 Q. Who do you know at Lehman who was involved in that negotiation? 15 A. Not specifically. 15 A. I could only -- I could only make an 16 Q. Is there anybody else besides those 16 that you have mentioned today who it was within assumption. I don't know specifically. 17 17 Q. Who were the people that you believe their area of responsibility to do valuations of 18 18 securities or assets at Lehman? 19 might have been involved in negotiations with 19 Barclays over the sale? 20 A. Can you repeat the question. 20 21 (Record read) 21 A. Bart McDade, Alex Kirk, Mike Gelband. A. What do you mean by -- obviously 22 These are just -- this is just -- would be my 22 23 traders mark --23 assumption. 24 Q. Right. Besides the traders, I think 24 Potentially Skip McGee, ran investment you said that the traders then give their 25 banking. Mark Schaefer. 25 TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 108 Page 109 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 1 2 2 Q. What was Mark Schaefer's role? A. Weekend of the 20th and 21st? I was -- that weekend I was working with Eric 3 A. He -- I think he was head of M&A. 4 Q. Did you ever speak to anybody about 4 Bommensath around coming up with contracts for the 5 people that would be on the team in credit. 5 any terms or conditions about the sale 6 6 Q. Any other meetings with anyone from transaction? 7 7 A. No. **Barclays?** 8 8 Q. Did you ever have any involvement with A. No. 9 the DTC, Depository Trust and Clearing 9 Q. Were you involved at all in the assessment of the value of the goodwill of LBI 10 **Corporation?** 10 A. No. 11 that was purchased by Barclays? 11 12 12 Q. Do you know who at Lehman was A. No. interacting with the DTC at this time? O. Do you know who was involved in that 13 13 A. I don't. 14 14 valuation? 15 O. Were you involved at all in the 15 A. No. decision about what amount, if any, of the Q. Were you involved in any valuation of 16 16 residential mortgage backed securities would be real estate? 17 17 18 part of that transaction? 18 A. No. 19 Q. Do you know who would be involved in 19 A. No. 20 Q. Do you know who was involved in those 20 that valuation? 21 decisions? 21 A. Mark Walsh ran our real estate group, but I don't know who was involved in valuing it. 22 22 A. I don't. Q. The weekend between -- the weekend of (Exhibit 15, document Bates stamped 23 23 September 20 and 21, were you involved in any 24 BCI-EX30865 with attachment marked for meetings with Barclays during that time? 25 identification, as of this date.) TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580

Page 110 Page 111 FELDER - HIGHLY CONFIDENTIAL FELDER - HIGHLY CONFIDENTIAL 1 1 2 2 Q. Exhibit 15 goes from the numbers Q. Did any of these people, Stephen King, 3 3 BCI-EX30865 -- actually that's the cover e-mail, Charles Spero or Jasen Yang ever contact you about 4 and then there is a number of documents of a doing any work with the portfolio that is 5 5 described here? spreadsheet that are attached to it, and it was an 6 e-mail from Stephen King dated September 17, 2008. 6 A. No. Not that I recall. 7 7 Have you ever seen Exhibit 15? Q. Do you have an understanding under "BB 8 A. No, I don't recall seeing it. 8 takes" what's being described here? 9 9 A. "BB takes." BB -- well, it says takes Q. Who is Stephen King? A. Steven works at Barclays. He -- and 10 and leaves, so I assume it is securities being 10 11 at least now he is in -- he was in that PMTG 11 taken and securities being left. Q. Were you involved in putting together 12 group. 12 13 these numbers that are on Exhibit 15? 13 Q. And it is to C. Spero. Is it your 14 understanding that's Charles Spero? 14 15 A. Yeah, that's what it looks like. 15 (Exhibit 16, e-mail dated September 16 Q. Who is Jasen Yang? 16 18, 2008 at 12:23 p.m. marked for A. I don't know. identification, as of this date.) 17 17 Q. You will see in the middle of this Q. The next exhibit, 16, is an e-mail 18 18 19 e-mail, it says, "I am going to have to do the 19 from Gilles Aublin dated September 18, 2008, to same on the rest of the portfolio. I guess that 20 20 Fred Orlan and others, I believe you are on the cc is Felder, right?" Do you see that? 21 21 line, with the subject "Asset Transfer Update." A. Yes. Do you remember receiving this e-mail? 22 22 23 Q. Is it your understanding that's 23 A. I don't recall specifically. 24 referring to you? 24 Is that your e-mail address on the cc A. It looks that way, yes. 25 25 line? TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 112 Page 113 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 2 A. Yes. 3 Q. Were you involved at all in marking 3 Q. And who is Gilles Aublin? 4 A. He was in product control for credit. 4 the assets on or about September 18? 5 5 O. You will see that in the first of the A. No. bullet points, it says, "You will be provided 6 Q. And did you speak to Mr. Aublin at all 6 7 about the issues of valuation of the asset 7 later today the updated final list of assets that 8 transfer? will be carried over to the new entity." 8 9 9 Do you see that? 10 Q. You testified earlier today that you 10 A. Yes. Q. Were you provided with an updated 11 returned the \$25 million back to Lehman. 11 12 final list of assets that would be carried over to 12 A. Correct. 13 Q. Why did you do that? the new entity? 13 14 14 A. I don't recall. A. I thought it was the right thing to 15 Q. Do you know what this is referring to? 15 do. Given what had happened, I felt it was the proper, proper thing to do. 16 A. Only just what it says in the e-mail. 16 17 Q. When had you received that amount? 17 Q. Did you receive any list from Mr. Aublin or his team that reflected assets that 18 A. I received part in June of '08 and 18 part in September. 19 were carried over to the new entity? 19 20 20 A. I don't recall specifically getting Q. In addition to the \$25 million from 21 Lehman, had you been receiving an ongoing salary? 21 one. 22 Q. Then you see in the third bullet point A. I had my normal salary, yes. 22 23 it says, "Today it is critical that all positions 23 Q. And did you return any of the normal are marked carefully, as this mark will be the 24 salary? 24 basis of the transfer." Do you see that? 25 A. No. 25 TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580

Page 122 Page 123 FELDER - HIGHLY CONFIDENTIAL FELDER - HIGHLY CONFIDENTIAL 1 1 2 2 **EXAMINATION BY** in any of the businesses that you bumped into 3 about whether or not the business was within its 3 MR. CARDEN: 4 Q. The traders who are responsible for 4 risk appetite limits? 5 certain aspects of the fixed income portfolio are 5 A. I do recall Alex Kirk saying -- and I 6 the ones who do the marks every night, correct? 6 couldn't tell you when, this is going back 7 A. Correct. 7 pre-September, I do recall Alex saying that his 8 8 business had to get risk appetite lower. Q. How many traders, just roughly 9 speaking, were there within the fixed income area 9 O. And which business would he have been in the days when you were the cohead, who would 10 talking about? A. This was when he was the co-COO of 11 have prepared such marks? 11 12 A. Oh, I don't know how many specific 12 fixed income. So --13 trade -- I know there were about 3,000 people in 13 Q. So it was the fixed income division 14 that had to get limits lower? 14 fixed income. And I think that the split was about a third, a third, a third, sales, trading, A. I recall him saying that. 15 15 Q. Usage lower or limits lower? 16 research, so I would give an estimate without real 16 knowledge specifically of maybe about a thousand. 17 Risk appetite usage. 17 A. 18 Q. A lot of people? Q. OK. Thank you. I don't have any 18 19 A. A significant number. 19 further questions. Q. And those people, when they did their 20 20 MR. CARDEN: We have been admirably marks for the portfolios for which they were 21 efficient, but I have a few more questions. 21 22 responsible, did they have a responsibility to 22 Won't take long. 23 provide those marks up to an immediate supervisor 23 24 24 every day? 25 Or said another way, how were they 25 TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 124 Page 125 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 input into the system? 2 Q. So I know you, again, you don't 3 A. No, the traders input their own marks. 3 remember, I'm just trying to get what the process 4 On the evening of Thursday, I know you 4 would have been. don't recognize, or pardon me, don't recall having 5 5 When you're given -- if you were given 6 gone forth to get valuations. 6 the sheet that had the hundred largest positions 7 7 A. Right. in fixed income on the evening of Thursday or 8 Q. But had you done so and just don't 8 Friday morning, and you had to get fire sale marks 9 remember, who would you have asked to provide the 9 for those positions, is it your testimony that you marks for the portions of the portfolio that were 10 10 would have gone to Gilles? 11 provided to you Thursday evening? 11 MR. STERN: Objection to the form. 12 A. I would -- if I had to ask that 12 A. No. If things had already been marked question, I probably would have asked someone like 13 13 and I was asked to get what are the marks, I would 14 a Gilles in product control, because product 14 go to Gilles. 15 control was responsible for month-end variance 15 Q. Fair enough. testing, so they had -- they could get all of the 16 16 If you were asked to get fair sale 17 different marks all together in one spot. Each marks for those same positions on late Thursday 17 18 trader would only have their book. So the only 18 night or Friday morning, to whom would you have 19 place where you could go to get an aggregate list gone to get those fire sale marks? 19 20 of marks would be out of product control. 20 A. Within credit? 21 Q. That would only be on a once monthly 21 Q. Yes. 22 basis, correct? You had to go back to the end of 22 A. The people under me in credit would August, or is that done on a -have been Fred Orlan, who ran the high-yield 23 23 24 A. Product control could get all the business. Within the investment grade business, 25 marks on any given day. it would have been Jason Quinn and Anthony

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Would there be any way that you could have avoided going to each and every one of them in order to make the process more efficient? In other words, is there some one person above all of them to whom you might have gone to say get this done and that they in turn would have gone to the collection of people you described? Or is that person vou?

- A. Can you repeat the question.
- 12 Q. Yeah, I am happy to rephrase the question. 13

I know you don't have a recollection of this, I am simply trying to determine what you would have done if it in fact happened.

You were asked to give fire sale prices for the securities in Exhibit 2. You have got to find the people who are in a position to do it. You have described to me the people in each of the various asset classes who are in a position 22 to talk to the relevant traders and get those fire sale marks, correct? 23

A. Correct.

MR. STERN: Objection to the form.

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FELDER - HIGHLY CONFIDENTIAL Wait. Objection to the form, because the question incorporates all kinds of statements.

MR. CARDEN: That's fine. I am happy with the question. You can object to the

Q. So the question I have for you now is, is there --

MR. STERN: The point is if you are creating a misleading record, I just can't let that stand. So what exactly are you asking?

MR. CARDEN: We have done beautifully this far. I am perfectly happy with the answer. I am just trying to identify people who are involved. Let's just move on. I am happy to stand by the question. I have reformulated questions in the past when I thought you were correct. I thought you were mistaken about this. I don't really care about this.

Q. What I really want to know, Mr. Felder, is, if you had chosen to do so and were asked to provide fire sale prices for a wide

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collection of positions in the fixed income area, is there some one person you could have called as opposed to contacting all the people that you have described?

A. I could have gone to one person who would have gone to those people. So Mike Gelband would know all of those people, Alex Kirk would know all of those people.

Q. But at the end of the day, what you are saying to me, in order to provide the fire sale prices, you would have had to have gone back to the people that you have identified to get those prices, correct? Somebody would have had to have gone to them?

A. That would be the process I would go through.

Q. That's what I am asking for. OK.

19 And it is your testimony you have no 20 recollection of having done that on Thursday night or Friday morning? 21

A. I have no recollection of having done 22 that. 23

Q. OK, thank you, sir.

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2 **EXAMINATION BY**

3 MS. TAGGART:

> Q. I will ask a couple of follow-up questions to this.

When you talk about the traders are the ones who put together marks, do they do that on a routine basis?

A. They mark their books every day.

10 Q. And what's involved in marking the 11 books every day?

A. For what type of a trader?

O. It varies from trade to trade? Let me ask this: Where do they put the information on a daily basis, or did they at this time?

A. Whatever the front office system of that asset class is would be where the marks would be put in.

Q. When you say a front office system, are you talking about a computerized database?

A. An application. There were different applications for different products, that would all feed into the middle office or the back office of the firm. So depending on what the product was, whatever system that was used would be the --

Page 134 Page 135 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 would be -- that is where they would put the 2 systems. 3 3 Q. Did marks ever change from the close prices into. 4 4 Q. When you talk about a system, a of the market on Friday to the opening of the 5 5 computerized system? market on Mondays? 6 A. Computerized system. 6 A. From the close on a Friday to the open 7 Q. So every day traders would be entering 7 on a Monday? 8 marks for the securities that they were involved Q. Yes. 9 9 in on some sort of computer system; is that A. I don't think you could do -- I don't 10 correct? 10 think the system would let you -- you can get an 11 A. To my knowledge, that -- a computer 11 end-of-day mark, and then I don't think you could 12 go in and change -- as far as I know, you couldn't 12 system was used in the products I knew. 13 go in and change a mark once it was committed for 13 Q. Did you ever personally access on a 14 computer system daily marks? 14 that day until the mark for the next day. 15 A. In risk systems, you can see -- you 15 Q. In particular on the weekend of 16 can see the marks of securities. 16 **September 19 -- from the close of the market on** Q. How do you see them? September 19 to the opening of the market on 17 17 September 22, would there be any reason for any of 18 18 On the computer screen. A. 19 O. Did the computer screen -- is there a 19 the marks from the credit business to change over 20 database that you remember, a name of a database 20 that weekend? 21 where you personally could go and access daily 21 Not that I would be aware of. 22 22 marks? Q. OK, that is all. 23 23 A. In -- within credit, our main risk system was called ICE, I-C-E. And that 24 consolidated the derivative systems and the cash 25 TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580 Page 137 Page 136 1 FELDER - HIGHLY CONFIDENTIAL 1 FELDER - HIGHLY CONFIDENTIAL 2 **EXAMINATION BY** 2 understand the process then. So on a daily basis, 3 the traders would mark the assets that they were 3 MR. BYMAN: 4 Q. I apologize. Every time somebody asks 4 responsible for. On a monthly basis, product 5 a question, somebody else thinks of another 5 control would do its own evaluation. To the 6 6 extent there was a variance, it would escalate to question. 7 you, and you would decide who was right or whether 7 When the traders do their marks, and I 8 understand, I think, that process, is there any 8 it was someplace in the middle? 9 other group such as the product control group that 9 A. No. The product controllers does an independent analysis of where they think ultimately had the -- you couldn't overrule a 10 10 11 certain assets should be valued? 11 product controller because they had the third-party data. So if they said this, this is 12 A. That would be done monthly, and there 12 off, then the book just got marked down by where would be variance reports. I only know this 13 13 it was. 14 specifically within credit because I hadn't gone 14 15 through that process in the other asset classes. 15 If there was a situation where -- if So within credit, we had a monthly variance there was a situation where there was other data 16 16 in the market that the product controllers didn't 17 meeting with product control to go through any 17 18 positions that they felt -- they got external data 18 have, for example, then -from third parties and they compared the marks to 19 Q. You would reason with them, but you 19 that external data, and then the desk heads would 20 couldn't overrule them? 21 sit down with product control, and then ultimately 21 A. Right. That was my experience within 22 I would sit down to make sure that the business 22 was properly marked from the product control --23 Q. And so far as you know, is that the 24 from a -- essentially a third party's perspective. 24 same system that other businesses use within 25 Q. So I want to make sure that I 25 Lehman? TSG Reporting - Worldwide (877) 702-9580 TSG Reporting - Worldwide (877) 702-9580

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              UNITED STATES BANKRUPTCY COURT
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                                 )
                                 ) Chapter 11
                                ) Case No. 08-13555(JMP)
     LEHMAN BROTHERS
7
     HOLDINGS, INC., et al.,
8
                    Debtors. )
9
10
11
12
13
14
15
            HIGHLY CONFIDENTIAL DEPOSITION OF
16
                   DANIEL JOSEPH FLEMING
17
                     New York, New York
18
                 Friday, August 28, 2009
19
20
21
22
23
     Reported by:
24
     KRISTIN KOCH, RPR, RMR, CRR, CLR
     JOB NO. 24123
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	Page 10		Page 11
1	Fleming - Highly Confidential	1	Fleming - Highly Confidential
2	in 1998?	2	management reporting in to Ian Lowitt, who at
3	A. I reported in to an individual by	3	the time was the treasurer.
4	the name of Robert Murack.	4	Q. So if I can just step back to
5	Q. And was there a time when that	5	clarify, in 2001, 2002 you became the U.S. head
6	changed and you started to report to someone	6	of cash and collateral management and then in
7	else or did you report	7	2006 you became the global head of cash and
8	A. Yes. Robert left the organization.	8	collateral management; is that correct?
9	I was then reporting in to an individual by the	9	A. That sounds approximately correct,
10	, ,	10	yes.
11		11	Q. And at the time that you were the
12	network management and possibly some other	12	U.S. head of cash and collateral management,
13		13	were you reporting to the then global head of
14	report to the treasurer at the time who was	14	cash and collateral management or directly to
15	Daniel Minerva. Kathy Bopp Flynn moved into a	15	the treasurer?
16	new role at some point after I was reporting in	16	MR. C. GREEN: Object to form.
17	to her. A new individual by the name of Robert	17	You can answer. Go right ahead.
18	van Zwieten was hired. Robert was responsible	18	A. There was a change in organizational
19	č č	19	structure during my time at Lehman Brothers.
20	*	20	When I first joined, there was no global head.
21	•	21	Each region ran their own treasury group. At
22	1 1	22	some point, I don't exactly remember when that
23	, 1	23	was, they created global heads for each
24		24	function within treasury.
25	the global head of cash and collateral	25	Q. So to clarify, when you were going
	Page 12		Page 13
1	Fleming - Highly Confidential	1	Fleming - Highly Confidential
2	through the people you reported to prior to	2	MR. C. GREEN: I'm sorry, at the
3	becoming global head, Kathy Bopp Flynn, at the	3	time he became global head or throughout
4	time that you reported to her, what was her	4	the period of time that he was global head?
5	title?	5	Q. Why don't we say at the time you
6	A. She was senior vice president. That	6	became global head, how many direct reports did
7	was her official title.	7	you have?
8	Q. Let's move on. Let's go back to you	8	A. I don't really recall. It could
9	became global head of cash and collateral	9	have been three. I don't remember exactly what
10		10	it was.
11	E	11	Q. Did it change substantially over
12	, i	12	time?
13	1	13	A. I think towards the end there were
14	\mathcal{E} 1 \mathcal{I}	14	two direct reports in the U.S.
15 16		15	Q. And at the end who were those two
16 17	· · ·	16	direct reports?
17	J	17	A. Craig Jones and Mandeep Seekond.
18 19	<u> </u>	18 19	Q. Could you spell the last name?A. S-E-E-K-O-N-D.
20		20	Q. Were you and your two direct
21		21	reports, Craig Jones and Mandeep Seekond, the
22		22	only members of the U.S. cash and collateral
23		23	management team?
24		24	A. No.
25		25	Q. Who else would have comprised

Page 34 Page 35 1 1 Fleming - Highly Confidential Fleming - Highly Confidential 2 Joseph Bellingeri. That does not constitute 2 MR. C. GREEN: This would be the the whole repo desk. There were many other 3 3 weekend of the 13th and 14th? 4 things that the repo desk was doing that we 4 MS. CARRERO: Yes, September 13th 5 were not liaising with them on, so those two 5 and 14th. 6 individuals were our primary contacts and those 6 A. I don't recall. I don't remember if 7 two individuals were the ones that were 7 I was working or not working. 8 executing the bulk of Lehman Brothers, Inc.'s 8 Q. Do you have any recollection of 9 9 being involved in any sort of negotiations secured financing. 10 Q. And were Servidio and Bellingeri the 10 either directly or indirectly for the sale of 11 1 individuals to whom your group would send any part of Lehman that weekend? 12 12 A. No. reports? 13 13 Q. Were you ever involved in any MR. C. GREEN: Object to form. A. The information that we provided, I 14 L 4 negotiations for the sale of any part of Lehman 15 L 5 believe, went to a broader distribution than or its assets? 16 16 just those two individuals. A. No. 17 Q. If you could take me through 17 Q. Do you recall generally what you 18 starting September 12th, 2008, the weekend 18 were doing on September 15th, the date that 19 before Lehman Brothers Holdings, Inc. filed for 19 Lehman Brothers Holding had filed for 20 bankruptcy, what you were doing that weekend 20 bankruptcy? 21 before the filing. 21 A. That would be Monday? 22 2.2 MR. C. GREEN: Object to form. That would be Monday, September Q. 23 23 A. The weekend prior to bankruptcy, the 15th. 24 holding company bankruptcy? 24 I mean, generally speaking, we were 2.5 25 Q. Yes. trying to figure out how we were going to Page 37 Page 36 1 Fleming - Highly Confidential 1 Fleming - Highly Confidential 2 continue to run LBI. 2 trying to shut down the holding company and its subsidiaries, which, quite frankly, at the time 3 Q. And what decisions were made in 3 4 terms of how to continue running LBI? 4 there was ambiguity around which legal entities 5 MR. C. GREEN: Object to form. What 5 were in bankruptcy and which ones were not, and trying to run LBI required a tremendous amount 6 decisions were made by him? 6 7 Q. Do you have any recollection of what of coordination and effort between operations, 7 decisions were made in terms of running LBI? 8 8 technology, finance, treasury, right, to 9 9 effectively shut down the pipes and plumbing as MR. C. GREEN: By whom? 10 Q. On the 15th what's your 10 we could for that portion of the business that 11 recollection -- you had testified that on the 11 we believed was in bankruptcy while keeping 12 15th what was going on was conversations in 12 within that same grid the portion that we 13 terms of how to run LBI. Could you expand upon 13 thought was still a functioning entity open for 14 14 that, please. business and being able to satisfy the 15 MR. C. GREEN: Object to form. 15 obligations that came about on Monday morning. 16 We had issued checks. We had -- there were 16 A. Okay. So the thought that -- Lehman 17 17 Brothers was an integrated organization, debit cards clients were using. The banks are meaning that legal entities were not simply 18 18 coming to us Monday morning saying, you know, 19 stand-alone entities, that it was an integrated 19 how are you going to pay for this, how are you 20 organization. Systems were integrated, 20 going to do this, how are you going to do that. processes were integrated. The notion that, 21 So that was what I was spending the bulk of my 21 22 you know, the 15th of September that we can say 22 time on, in addition to fielding questions from

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that, you know, the holding company is bankrupt

and the broker/dealer is not and people just go

about their day is just not a reality, so

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many, many different people internally and

remit payment or fund for certain types of

externally as it related to our ability to

	Page 134		Page 135
1	Fleming - Highly Confidential	1	Fleming - Highly Confidential
2	Q. And could you explain to me the	2	clients, such as New York Stock Exchange
3	difference between the two OCC margin accounts?	3	portfolio margin treatment, allows for the
4	A. I'm not an expert in the margin. I	4	netting of options and other types of
5	didn't control the OCC processing. My	5	instruments that are housed within the client's
6	understanding is that the house represents the	6	account whereby the OCC is only looking at the
7	proprietary positions and that the customer	7	option position, so there never is a
8	represents customer positions or the margin	8	correlation, so you could never locate the
9	associated with each.	9	client asset applicable to a margin I
10	Q. And would Lehman funds be used to	10	shouldn't say never. We couldn't. We didn't.
11		11	So it was firm assets that were pledged to the
12		12	OCC.
13	MR. C. GREEN: Object to the form of	13	Q. And if you would turn your attention
14		14	to column F, which is entitled IM Excess
15	Do you have the question in mind?	15	Deficit, could you explain for me what column F
16		16	is tracking?
17	answering the question?	17	A. IM stands for initial margin, which
18	MR. C. GREEN: Do you want to read	18	is determined by the exchange.
19	back the question.	19	Q. If there is an excess under IM
20		20	excess deficit, is the excess available to be
21	A. We would use firm assets to pledge	21	returned to Lehman?
22	to the customer requirement. There is no	22	A. I believe so.
23	correlation between the customer margin and the	23	Q. If you turn your attention to
24	margin that's actually collected from clients,	24	column H of Exhibit 304B, the column is headed
25	because the margin treatment that we give	25	Exchange Margin Available.
	Page 136		Page 137
1	Fleming - Highly Confidential	1	Fleming - Highly Confidential
2	Do you have any understanding as to	2	(Discussion off the record.)
2	Do you have any understanding as to the meaning of the numbers in that column?	2 3	(Discussion off the record.) MS. CARRERO: Withdraw the pending
	the meaning of the numbers in that column?		MS. CARRERO: Withdraw the pending
3 4	the meaning of the numbers in that column? A. I don't know.	3	· · · · · · · · · · · · · · · · · · ·
3	the meaning of the numbers in that column? A. I don't know. Q. And do you know if the excess margin	3 4	MS. CARRERO: Withdraw the pending question. BY MS. CARRERO:
3 4 5	the meaning of the numbers in that column? A. I don't know. Q. And do you know if the excess margin in the OCC customer and house accounts, which	3 4 5	MS. CARRERO: Withdraw the pending question. BY MS. CARRERO: Q. Mr. Fleming, are you aware of excess
3 4 5 6	the meaning of the numbers in that column? A. I don't know. Q. And do you know if the excess margin in the OCC customer and house accounts, which can be found in lines 58, 59 and 60, were	3 4 5 6	MS. CARRERO: Withdraw the pending question. BY MS. CARRERO: Q. Mr. Fleming, are you aware of excess margin growing in the margin accounts at OCC
3 4 5 6 7	the meaning of the numbers in that column? A. I don't know. Q. And do you know if the excess margin in the OCC customer and house accounts, which	3 4 5 6 7	MS. CARRERO: Withdraw the pending question. BY MS. CARRERO: Q. Mr. Fleming, are you aware of excess
3 4 5 6 7 8	A. I don't know. Q. And do you know if the excess margin in the OCC customer and house accounts, which can be found in lines 58, 59 and 60, were growing on the 16th as opposed to the numbers on the 15th if you turn to the fourth page of	3 4 5 6 7 8	MS. CARRERO: Withdraw the pending question. BY MS. CARRERO: Q. Mr. Fleming, are you aware of excess margin growing in the margin accounts at OCC over the week of September 15th?
3 4 5 6 7 8 9	the meaning of the numbers in that column? A. I don't know. Q. And do you know if the excess margin in the OCC customer and house accounts, which can be found in lines 58, 59 and 60, were growing on the 16th as opposed to the numbers on the 15th if you turn to the fourth page of the attachment and look at the same lines 58, 59 and 60?	3 4 5 6 7 8 9	MS. CARRERO: Withdraw the pending question. BY MS. CARRERO: Q. Mr. Fleming, are you aware of excess margin growing in the margin accounts at OCC over the week of September 15th? MR. C. GREEN: Object to the form of
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3 4 5 6 7 8 9 10 11 12	A. I don't know. Q. And do you know if the excess margin in the OCC customer and house accounts, which can be found in lines 58, 59 and 60, were growing on the 16th as opposed to the numbers on the 15th if you turn to the fourth page of the attachment and look at the same lines 58, 59 and 60? MR. C. GREEN: Object to the form of the question. Q. Because of any particular event?	3 4 5 6 7 8 9 10 11 12 13	MS. CARRERO: Withdraw the pending question. BY MS. CARRERO: Q. Mr. Fleming, are you aware of excess margin growing in the margin accounts at OCC over the week of September 15th? MR. C. GREEN: Object to the form of the question. A. I would say that I was nothing stood out or nothing was brought to my
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	the meaning of the numbers in that column? A. I don't know. Q. And do you know if the excess margin in the OCC customer and house accounts, which can be found in lines 58, 59 and 60, were growing on the 16th as opposed to the numbers on the 15th if you turn to the fourth page of the attachment and look at the same lines 58, 59 and 60? MR. C. GREEN: Object to the form of the question. Q. Because of any particular event? A. I'm not sure I'm looking at the right thing. So the second Q. So page 2 of the attachment, lines 58 through 60, and then page 4 of the attachment to Exhibit 304B, lines 58 through 60.	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	MS. CARRERO: Withdraw the pending question. BY MS. CARRERO: Q. Mr. Fleming, are you aware of excess margin growing in the margin accounts at OCC over the week of September 15th? MR. C. GREEN: Object to the form of the question. A. I would say that I was nothing stood out or nothing was brought to my attention as it related to issues with let me rephrase that. I was not aware of issues with a growing amount of excess in the accounts, so I think it's fair to say that there was always some amount of excess in the accounts. I also think it's fair to say that there was a tremendous amount happening during that time frame, not only as it relates to, you
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 20 21 22	the meaning of the numbers in that column? A. I don't know. Q. And do you know if the excess margin in the OCC customer and house accounts, which can be found in lines 58, 59 and 60, were growing on the 16th as opposed to the numbers on the 15th if you turn to the fourth page of the attachment and look at the same lines 58, 59 and 60? MR. C. GREEN: Object to the form of the question. Q. Because of any particular event? A. I'm not sure I'm looking at the right thing. So the second Q. So page 2 of the attachment, lines 58 through 60, and then page 4 of the attachment to Exhibit 304B, lines 58 through 60. A. And which columns? Q. I'm sorry, column K on page 4.	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MS. CARRERO: Withdraw the pending question. BY MS. CARRERO: Q. Mr. Fleming, are you aware of excess margin growing in the margin accounts at OCC over the week of September 15th? MR. C. GREEN: Object to the form of the question. A. I would say that I was nothing stood out or nothing was brought to my attention as it related to issues with let me rephrase that. I was not aware of issues with a growing amount of excess in the accounts, so I think it's fair to say that there was always some amount of excess in the accounts. I also think it's fair to say that there was a tremendous amount happening during that time frame, not only as it relates to, you know, positions that we were trading in or clients were trading in, but the market in
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	the meaning of the numbers in that column? A. I don't know. Q. And do you know if the excess margin in the OCC customer and house accounts, which can be found in lines 58, 59 and 60, were growing on the 16th as opposed to the numbers on the 15th if you turn to the fourth page of the attachment and look at the same lines 58, 59 and 60? MR. C. GREEN: Object to the form of the question. Q. Because of any particular event? A. I'm not sure I'm looking at the right thing. So the second Q. So page 2 of the attachment, lines 58 through 60, and then page 4 of the attachment to Exhibit 304B, lines 58 through 60. A. And which columns? Q. I'm sorry, column K on page 4. A. So column F is the equivalent of	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	MS. CARRERO: Withdraw the pending question. BY MS. CARRERO: Q. Mr. Fleming, are you aware of excess margin growing in the margin accounts at OCC over the week of September 15th? MR. C. GREEN: Object to the form of the question. A. I would say that I was nothing stood out or nothing was brought to my attention as it related to issues with let me rephrase that. I was not aware of issues with a growing amount of excess in the accounts, so I think it's fair to say that there was always some amount of excess in the accounts. I also think it's fair to say that there was a tremendous amount happening during that time frame, not only as it relates to, you know, positions that we were trading in or clients were trading in, but the market in general. So the volatility of, you know, the
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	the meaning of the numbers in that column? A. I don't know. Q. And do you know if the excess margin in the OCC customer and house accounts, which can be found in lines 58, 59 and 60, were growing on the 16th as opposed to the numbers on the 15th if you turn to the fourth page of the attachment and look at the same lines 58, 59 and 60? MR. C. GREEN: Object to the form of the question. Q. Because of any particular event? A. I'm not sure I'm looking at the right thing. So the second Q. So page 2 of the attachment, lines 58 through 60, and then page 4 of the attachment to Exhibit 304B, lines 58 through 60. A. And which columns? Q. I'm sorry, column K on page 4. A. So column F is the equivalent of column K? Is that what	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	MS. CARRERO: Withdraw the pending question. BY MS. CARRERO: Q. Mr. Fleming, are you aware of excess margin growing in the margin accounts at OCC over the week of September 15th? MR. C. GREEN: Object to the form of the question. A. I would say that I was nothing stood out or nothing was brought to my attention as it related to issues with let me rephrase that. I was not aware of issues with a growing amount of excess in the accounts, so I think it's fair to say that there was always some amount of excess in the accounts. I also think it's fair to say that there was a tremendous amount happening during that time frame, not only as it relates to, you know, positions that we were trading in or clients were trading in, but the market in

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1	Fleming - Highly Confidential	1	Fleming - Highly Confidential
2	the fact that we had excess there doesn't come	2	deposited to satisfy the margin requirement.
3	as a surprise.	3	Q. So for the customer margin account
4	Q. If there is excess in the account,	4	at OCC there would be a related account holding
5	does that suggest any volatility in the market	5	any exchange-traded derivatives; is that
6	was in Lehman's favor in aggregate?	6	accurate?
7	MR. C. GREEN: Object to the form.	7	MR. C. GREEN: Object to the form.
8	A. I wouldn't draw any conclusion like	8	A. There would be customer trades that
9	that. All I am saying is there was, you know,	9	correspond to the customer margin.
10	unprecedented volatility in the marketplace.	10	(Exhibit 305B, e-mail dated
11	Q. Could you explain to me how the	11	September 23, 2008, Bates stamped
12	margin accounts at an exchange like OCC work in	12	BCI-EX-(S)-000191987 through
13	tandem with the position accounts?	13	BCI-EX-(S)-000191194, marked for
14	MR. C. GREEN: Object to the form.	14	identification.)
15	A. I cannot describe to you the	15	Q. Mr. Fleming, you have before you
16	calculation of margin at the exchanges that	16	what's been marked Exhibit 305B.
17	they perform. I don't know what that	17	A. Yes.
18	calculation consists of.	18	Q. Do you know what this document is?
19	Q. Could you explain to me how the	19	A. This appears to be a statement from
20	margin account is related to any account	20	the OCC.
21	holding exchange-traded derivatives?	21	Q. Do you recall receiving these
22	MR. C. GREEN: Object to the form.	22	statements on September 23rd from Susie Chen?
23	A. There is a margin calculation based	23	A. Not specifically, but it shows here
24	on the positions and then there is a designated	24	that well, there is a memo here. I don't
25	account whereby qualified assets need to be	25	recall actually reviewing or doing anything
	Page 140		Page 141
1	Fleming - Highly Confidential	1	Fleming - Highly Confidential
2	with these statements.	2	Q. Particularly with respect to OCC
3	Q. Do you recall attending a meeting	3	margin, who, if not you, would have attended
4	regarding OCC margin around September 23rd?	4	any meetings taking place on the issue?
5	A. I don't. There were a lot of	5	A. It's conceivable that Craig Jones
6 7	meetings happening at the time and I didn't	6 7	may have attended the meeting you are
	I wasn't actively managing the day-to-day business, the detail, so it's likely that	8	referencing.
8		9	Q. And at this point on September 23rd are you employed by Lehman or are you employed
10	someone else would have been attending those meetings who was more familiar with the	10	by Barclays at this point?
11	details.	11	MR. C. GREEN: Object to the form.
12	Q. Do you have any idea of who would	12	A. I don't know. I don't know.
13	- •	13	Q. Do you recall if at any point during
14	have been attending those meetings? MR. C. GREEN: Object to the form of	14	the week of September 15 you received an offer
15	the question. When you say "those	15	of employment from Barclays?
16	meetings," you mean this particular meeting	16	A. I recall receiving an offer of
17	you are referring to or	17	employment. I don't recall what day it was
18	MS. CARRERO: Mr. Fleming said that	18	that that occurred.
19	it was likely that somebody else would have	19	Q. Do you recall how you received that
20	been attending those meetings who was more	20	offer of employment?
21	familiar with the details. I am asking him	21	A. I received a phone call from
22	to clarify who those individuals might have	22	Mr. Lowitt advising me that Barclays would like
23	been.	23	to hire me.
24	MR. C. GREEN: He said there were a	24	Q. And do you recall if you received a
25	lot of meetings.	25	written offer following Mr. Lowitt's call?

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Page 1
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2
             UNITED STATES BANKRUPTCY COURT
3
             SOUTHERN DISTRICT OF NEW YORK
                               )
    In re:
                               ) Chapter 11
    LEHMAN BROTHERS
                        ) Case No. 08-13555(JMP)
    HOLDINGS, INC., et al.,
7
8
                  Debtors.
       -----)
9
10
11
12
13
14
15
     HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF
16
                      JAMES FOGARTY
17
                   New York, New York
18
                Friday, January 15, 2010
19
20
21
22
23
    Reported by:
24
    KRISTIN KOCH, RPR, RMR, CRR, CLR
25
    JOB NO. 27091
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	Page 6		Page 7
1		1	Fogarty - Highly Confidential
2	THE VIDEOGRAPHER: This is the start	2	Q. So you are familiar with how this
3	of tape number 1 of the videotaped	3	process works?
4	deposition of James Fogarty in the matter	4	A. Very, very pleasant experience.
5	in re Lehman.	5	Q. Okay. If at any point you are not
6		6	sure what I am asking, please ask me to
	Today's date is January 15th, 2010	7	rephrase the question. I will be happy to try.
7	at approximately 9:36 a.m.	8	1 117 7
8	Will the court reporter please swear		Could you please briefly describe
9	in the witness.	9 10	your employment history.
10			A. I was with Alvarez and I am with
11	, E	11	Charming Shoppes now. I am the CEO at Charming
12	- J	12	Shoppes. I started there April of this year.
13		13	And prior to that I was with Alvarez & Marsal
14		14	for over 15 years, and prior to that I was with
15		15	KPMG Peat Marwick for six years, five years,
16	8, 18, 19	16	something like that.
17		17	Q. And can you please describe your
18		18	educational background.
19	name and address for the record, please.	19	A. Bachelor of arts, Williams College,
20	A. James Fogarty, and I am at 14 Old	20	and MBA from Stern School and a master's in
21	Roaring Brook Road, Mount Kisco, New York,	21 <mark>22</mark>	accounting from The Stern School.
22	10549.	22	Q. What did you do for Alvarez?
23	Q. And can you please have you been	23	A. I was, the back half of my career
24		24	there, mostly an interim manager in distress
h =	1	h =	The state of the s
25	A. Once.	25	situations.
25		25	
	Page 8		Page 9
1	Page 8 Fogarty - Highly Confidential	1	Page 9 Fogarty - Highly Confidential
1 2	Page 8 Fogarty - Highly Confidential Q. And can you describe in a little	1 2	Page 9 Fogarty - Highly Confidential You can answer.
1 2 3	Page 8 Fogarty - Highly Confidential Q. And can you describe in a little more detail what duties and responsibilities	1 2 3	Page 9 Fogarty - Highly Confidential You can answer. THE WITNESS: Say that again. I
1 2 3 4	Page 8 Fogarty - Highly Confidential Q. And can you describe in a little more detail what duties and responsibilities you had in that position.	1 2 3 4	Page 9 Fogarty - Highly Confidential You can answer. THE WITNESS: Say that again. I missed
1 2 3 4 5	Page 8 Fogarty - Highly Confidential Q. And can you describe in a little more detail what duties and responsibilities you had in that position. A. So I was I was really on sort of	1 2 3 4 5	Page 9 Fogarty - Highly Confidential You can answer. THE WITNESS: Say that again. I missed MR. TAMBE: I just object to the
1 2 3 4	Page 8 Fogarty - Highly Confidential Q. And can you describe in a little more detail what duties and responsibilities you had in that position. A. So I was I was really on sort of a handful of cases over that period of time. I	1 2 3 4	Fogarty - Highly Confidential You can answer. THE WITNESS: Say that again. I missed MR. TAMBE: I just object to the form of the question. You can answer the
1 2 3 4 5 6 7	Fogarty - Highly Confidential Q. And can you describe in a little more detail what duties and responsibilities you had in that position. A. So I was I was really on sort of a handful of cases over that period of time. I was the CFO of Warnaco Group for about two and	1 2 3 4 5	Fogarty - Highly Confidential You can answer. THE WITNESS: Say that again. I missed MR. TAMBE: I just object to the form of the question. You can answer the question.
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Fogarty - Highly Confidential Q. And can you describe in a little more detail what duties and responsibilities you had in that position. A. So I was I was really on sort of a handful of cases over that period of time. I was the CFO of Warnaco Group for about two and a half years. I was the CFO then at Levi Strauss for about two and a half years. And then I was the CEO of American Italian Pasta Company, again, about two years, give or take, something like that. And then after that I was at Lehman Brothers as the chief operating officer post filing. Q. So Alvarez & Marsal would come in to distressed companies and you would then essentially function as the company's management? A. That's correct.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Fogarty - Highly Confidential You can answer. THE WITNESS: Say that again. I missed MR. TAMBE: I just object to the form of the question. You can answer the question. THE WITNESS: I can answer. Okay. A. I was well, it's probably easier I guess the 15th of September was the date that Lehman filed and our firm became involved, basically, that day or we got a call the night before, Brian Marsal got a call, and we started that day over at the offices and there was you know, the sort of first I had heard of Barclays and Lehman was probably that day, that there was continuing work on trying to put a transaction together. Q. And can you describe your first
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1 2 3 4 5 6 7 8 9 0 11 12 14 15 16 17 18 19 20 21	Fogarty - Highly Confidential Q. And can you describe in a little more detail what duties and responsibilities you had in that position. A. So I was I was really on sort of a handful of cases over that period of time. I was the CFO of Warnaco Group for about two and a half years. I was the CFO then at Levi Strauss for about two and a half years. And then I was the CEO of American Italian Pasta Company, again, about two years, give or take, something like that. And then after that I was at Lehman Brothers as the chief operating officer post filing. Q. So Alvarez & Marsal would come in to distressed companies and you would then essentially function as the company's management? A. That's correct. Q. And when was the first time you had any involvement or connection with the	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20 21	Fogarty - Highly Confidential You can answer. THE WITNESS: Say that again. I missed MR. TAMBE: I just object to the form of the question. You can answer the question. THE WITNESS: I can answer. Okay. A. I was well, it's probably easier I guess the 15th of September was the date that Lehman filed and our firm became involved, basically, that day or we got a call the night before, Brian Marsal got a call, and we started that day over at the offices and there was you know, the sort of first I had heard of Barclays and Lehman was probably that day, that there was continuing work on trying to put a transaction together. Q. And can you describe your first involvement in the working in connection with Lehman during that assignment?
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 22 22 22 22 22 22 22 22 22 22 22	Fogarty - Highly Confidential Q. And can you describe in a little more detail what duties and responsibilities you had in that position. A. So I was I was really on sort of a handful of cases over that period of time. I was the CFO of Warnaco Group for about two and a half years. I was the CFO then at Levi Strauss for about two and a half years. And then I was the CEO of American Italian Pasta Company, again, about two years, give or take, something like that. And then after that I was at Lehman Brothers as the chief operating officer post filing. Q. So Alvarez & Marsal would come in to distressed companies and you would then essentially function as the company's management? A. That's correct. Q. And when was the first time you had any involvement or connection with the Lehman/Barclays sale transaction that occurred	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 1 22	Fogarty - Highly Confidential You can answer. THE WITNESS: Say that again. I missed MR. TAMBE: I just object to the form of the question. You can answer the question. THE WITNESS: I can answer. Okay. A. I was well, it's probably easier I guess the 15th of September was the date that Lehman filed and our firm became involved, basically, that day or we got a call the night before, Brian Marsal got a call, and we started that day over at the offices and there was you know, the sort of first I had heard of Barclays and Lehman was probably that day, that there was continuing work on trying to put a transaction together. Q. And can you describe your first involvement in the working in connection with Lehman during that assignment? I mean, did you start working on the
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1 2 3 4 5 6 7 8 9 0 1 1 1 2 1 3 1 4 1 5 1 6 1 7 1 1 2 1 2 1 2 1 2 2 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential Q. And can you describe in a little more detail what duties and responsibilities you had in that position. A. So I was I was really on sort of a handful of cases over that period of time. I was the CFO of Warnaco Group for about two and a half years. I was the CFO then at Levi Strauss for about two and a half years. And then I was the CEO of American Italian Pasta Company, again, about two years, give or take, something like that. And then after that I was at Lehman Brothers as the chief operating officer post filing. Q. So Alvarez & Marsal would come in to distressed companies and you would then essentially function as the company's management? A. That's correct. Q. And when was the first time you had any involvement or connection with the Lehman/Barclays sale transaction that occurred in September of 2008? MR. TAMBE: Objection to the form of	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 1 22	Fogarty - Highly Confidential You can answer. THE WITNESS: Say that again. I missed MR. TAMBE: I just object to the form of the question. You can answer the question. THE WITNESS: I can answer. Okay. A. I was well, it's probably easier I guess the 15th of September was the date that Lehman filed and our firm became involved, basically, that day or we got a call the night before, Brian Marsal got a call, and we started that day over at the offices and there was you know, the sort of first I had heard of Barclays and Lehman was probably that day, that there was continuing work on trying to put a transaction together. Q. And can you describe your first involvement in the working in connection with Lehman during that assignment? I mean, did you start working on the

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	Page 10		Page 11
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	a few others; Brian Marsal, John Suckow, David	2	Lehman's offices?
3	Coles, myself and a couple others, and we spent	3	A. Yes.
4	a lot of the first week we had some	4	Q. So on that Monday can you describe
5	connection with the management team, but,	5	what you did when you went over to their
6	frankly, the management team was connected in	6	offices?
7	working on the transaction, so there wasn't as	7	A. We went to the office, went to
8	much connection, frankly, as we are used to in	8	connect with Brian Marsal, and went in a
9	the first week, but we had a number of	9	conference room.
10		10	Q. What did you do in the conference
11			room?
12		11 12	A. We then had a meeting with I
13		13	
14		14	think the first meeting we had we met with Tom
			Russo, we met with Steve Berkenfeld. We
15		15	had a I can't remember all of the we had
16		16	a couple of connection meetings initially on
17		17	those first couple of days.
18	A. Well, the company had, of course,	18	MR. THOMAS: Let me go ahead and
19	just filed and we needed to, you know,	19	show you a document we will mark as 561-B.
20	understand the basics of how the business was	20	(Exhibit 561-B, e-mail dated
21	going to operate in Chapter 11 and whether	21	September 19, 2008, marked for
22	there was going to be, you know, liquidity to	22	identification.)
23	run the business during that time frame.	23	MR. TAMBE: Just before you get
24	Q. On starting with that Monday,	24	started
25	September 15th, did you physically go over to	25	MR. THOMAS: We are looking for a
	Page 12		Page 13
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	production copy. If I have it, we can	2	officer and his role was to understand the
3	introduce that also.	3	finances of the company and particularly, you
4	MR. TAMBE: Yes, or just read it	4	know, focus on liquidity measures and so forth,
5	into the record later on just what the	5	and my focus was more of the operating side, to
6	Bates number is, but there appears to be a	6	make sure that we could function in the back
7	Bates number that is cut off.	7	end of the business and have people in place
8	MR. THOMAS: Sure.	8	and so forth over time. I mean, initially we
9	Q. This is an e-mail which you are in	9	are all working things together, but that was
10	•	10	how the duties delineated over time.
11		11	Q. In the e-mail from David to Kristie
12	at Lehman dated September 18th.	12	Wong at Lehman, it says: "Some colleagues and
13	Do you see that?	13	I met with Martin Kelly on Tuesday."
14	A. I do.	14	Do you recall meeting with Martin
15	Q. Do you recognize this document?	15	Kelly on Tuesday of that week, it would be
16	A. I recall it.	16	September 16th?
17	Q. In the e-mail and who is David	17	A. I do not.
18	Coles?	18	Q. Do you know if you were a part of
19	A. David Coles is my partner,	19	that meeting?
20		20	A. I don't recall. I know David was
21	, I	21	
22	managing director at Alvarez & Marsal. He is one of the fellows I mentioned earlier.	22	spending time with Martin Kelly. I may have
23			met Martin once in the hallway, but I don't
23 24	Q. What was his role with respect to	23	believe I was ever spending quality time with
Ľ4		24	Martin.
25	A. David became the chief financial	25	Q. The e-mail goes on to say that they

Page 14 Page 15 Fogarty - Highly Confidential Fogarty - Highly Confidential 1 1 2 discussed the consolidated balance sheet and 2 were trying to work up this post Barcap sale 3 the likely post Barcap sale BS. 3 balance sheet? 4 4 Do you see that? A. Well, we were trying to understand 5 5 what assets will be our responsibility, in A. I see that. 6 Q. What do you understand the post 6 other words, what assets will be left behind, Barcap sale BS to refer to? 7 and start to think about what we need to do to 7 8 MR. TAMBE: Objection to the form of 8 manage that process of optimizing the answer 9 9 the question. for our creditors. 0 You can answer. 10 Q. Let me go ahead and show you a 11 1 MR. THOMAS: Some of these document which has been previously marked as 12 2 Exhibit 485. objections he will state an objection just 13 3 to preserve something about the question (Document review.) 14 Q. Do you recognize this as an e-mail 14 and but then you can go ahead and answer . 5 unless he instructs you not to. 15 from you to quite a few people at Alvarez --6 16 A. Yes. THE WITNESS: Okay. 17 L 7 A. Post Barcap sale BS presumably means Q. -- dated September 20th, 2008 8 post Barcap -- post sale to Barclays capital 18 concerning the deal status? 19 19 balance sheet. A. Yes. 20 20 Q. Was that something you guys were Q. And which deal is that referring to? trying to work up, Alvarez & Marsal, at this 21 A. Well, let me -- let me read it here. 21 22 22 (Document review.) time? A. Okay. I read it. Sorry. I missed 2.3 A. I was not spending time on it. 23 24 David was. 24 the question. 25 O. Sure. Is the deal being referred to 25 O. And do you know why Alvarez folks Page 16 Page 17 Fogarty - Highly Confidential 1 Fogarty - Highly Confidential A. It's just not closed, so, you know, 2 here the sale transaction between Lehman and 2 3 3 when a deal is not yet closed, it's still --Barclays? 4 A. Yes. 4 it's still --5 5 Q. In the first line you write: "Bill Q. Right. I am asking you, you use the Gordon is point on the TSA negotiation. The 6 term "hasn't paper closed," which is it fair to deal is not 'paper closed' and the TSA has not 7 draw from that that there is an agreement, but 8 been agreed to yet." 8 it just -- they haven't finalized the papers? When you are referring to the deal 9 9 MR. TAMBE: Object to the form of 0 that is not paper closed, are you referring to 10 the question. .1 the Barclays sale transaction? 11 A. There was an evolving agreement, 2 A. Correct. 12 because there were -- again, I was not -- my 3 13 job was not to understand what was going on. I Q. And what did you mean by it is not 4 14 wasn't part of that negotiating process. My paper closed? 15 job was to understand for the estate how we 5 A. Not closed. In other words, it's a 16 6 period of time between -- well, it hasn't were going to get services for the estate after 17 7 closed yet. I can't remember exactly where it closed. So what I am referring to, the TSA 18 18 is the Transition Service Agreement where my it's between. 9 19 Q. By saying it hasn't paper closed -focus was. 20 A. It's not closed. 20 Q. I understand. But when you refer to Q. Is it your understanding that 21 paper closed, does that reflect your 21 22 agreement has been reached, but they haven't 22 understanding that by this point in time, 23 finalized the documents and executed them? 23 Saturday morning, September 20th, essentially agreement had been reached, but it hadn't been MR. TAMBE: Object to the form of 24 24 25 the question. 25 reduced to writing and the documents hadn't

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	Page 18		Page 19
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	been executed yet?	2	Q. Did you meet with anyone else
3	MR. TAMBE: Object to the form of	3	concerning the deposition?
4	the question. Asked and answered a number	4	A. No.
5	of times now.	5	Q. Did you discuss the deposition with
6	A. It hadn't closed as of this time, so	6	anyone?
7	there were still things being worked on.	7	A. No.
8	Q. So when you wrote	8	Q. Is it fair to say
9	A. In other words, the TSA was a	9	A. Can I I in addition to Jones
10	critical part of the process as well.	10	Day, I was called about the deposition by Phil
11	Q. And so when you wrote "paper	11	Kruse, my partner at Alvarez & Marsal,
12	closed," you really just meant closed?	12	basically to just tell me to expect a call from
13	A. I mean closed.	13	Jones Day.
14	Q. Not paper closed. Okay.	14	Q. Okay. There was no substantive
15	What did you do to prepare for	15	discussion
16	today's deposition?	16	A. No.
17	A. I didn't prepare.	17	Q about any issues involved in this
18		18	case or the deal?
19		19	A. Other than at a generic level that
20		20	the dispute was continuing. Other than sort of
21		21	at a generic level. We didn't get into any
22		22	details.
23		23	Q. And how did he describe the dispute
24		24	to you?
25		25	A. Just from a public standpoint in
		Ť	•
	Page 20		Page 21
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	terms of I forget the phrase the words he	2	A. We were having a very difficult time
3	would have used, but from a public standpoint	3	following what was going on and we were working
4	that XYZ motions had been filed back and forth.	4	very hard to understand it, again, from a
5	That's about all I can recall.	5	perspective of understanding how to have a
6	Q. And did he describe the substance of	6	control process around what was going to be
7	those motions?	7	left in the estate and how to manage what was
8	A. No.	8	going to be left in the estate. So we were
9	Q. Have you ever reviewed those	9	trying to get ahead of it and it was very
10		10	difficult to understand what was going on.
11		11	Q. And but you were trying to?
12		12	A. Our firm was yes, we were trying
13		13	to for purposes of understanding we were not
14		14	asked to be involved other than for purposes of
15	3	<mark>15</mark>	understanding what was left for our creditors
16	<u> </u>	<mark>16</mark>	and how we would prepare for managing those
17	, e	<mark>17</mark>	assets.
18		18	Q. You wanted to understand what assets
19		19	and liabilities were going over to Barclays and
20		20	what were staying with Lehman; correct?
21	reports."	21	A. We wanted to understand the latter
L -	T		
22	Can you describe where you were	22	and part of understanding the latter is
22 23	Can you describe where you were getting your information about the deal?	23	understanding the former.
22	Can you describe where you were getting your information about the deal? And if I say "deal," I am referring		

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	Page 22		Page 23
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	Q. Okay. And that would be important	2	A. Right.
	in developing the post Barclays balance sheet	3	Q. Were you also getting speaking
3 4			
4	as well; correct?	4	with anyone directly involved in the deal?
5	A. I wasn't thinking about it from a	5	A. September 20th. No. Other well,
6	development of a post Barclays balance sheet.	6	let me Steve Berkenfeld around just how, you
7	I was thinking about it from the standpoint of	7	know, sort of how is the deal going kind of a
8	what as assets were we going to have to manage.	8	thing as opposed to again, I wasn't intimate
	Q. When you refer here to this and	9	to any of the details of what was transpiring
10		10	and I was more interested in understanding
11	*	11	whether it was still happening and timing so
12		12	that we could, again, be prepared for the
13	someone, were you reading materials, attending	13	assets that we would need to manage for the
14	hearings?	14	estate.
15	A. I think the other report	15	Q. Well, you are reporting a number of
16	I'm refer or this report I'm referring to is	16	details to your colleagues; correct?
17	this I can't recall, but I think it's this	17	MR. TAMBE: Object to the form of
18	link here that's on the second page from my	18	the question.
19	colleague, Robert Hershan.	19	A. I'm recapping a number of details
20	Q. The Bloomberg summary?		that were that were referenced in the press.
21	A. I believe, but, again, I can't	20 <mark>21</mark>	Q. At the bottom of this page, the last
22	recall exactly what I was thinking about at the	22	bullet point, you write: "Well said - Daniel
23	time.	23	Golden of Akin Gump," quoting him to say "we
24	Q. So you were reading about the deal	24	believe this was a flawed sale process. It
25	in the press, for instance?	25	benefits Barclays and the federal government,
	•		-
	Page 24		Page 25
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
1 2 3	but not the creditors of this estate." Do you	2	Q. Did you keep yourself apprised of
3	see that?	3	those final document efforts?
4	A. I see that.	4	MR. TAMBE: Object to the form of
5	Q. Were you expecting an opinion that	5	the question.
6	this was a flawed sale process?	6	A. I was staying apprised of the
7	A. Say that again. Was I expecting	7	Transition Service Agreement negotiation
8	Q. Were you expressing the opinion to	8	through my team. Bill Gordon in particular was
9	your colleagues that this was a flawed sales	9	working on that piece for me.
10	process?	10	Q. And how were you staying apprised
11	A. I think it meant it was an	11	of
11 12	interesting comment, my phrase, "well said,"	12	A. E-mails, telephone.
13		13	Q. With whom?
14		14	A. Bill Gordon.
15	Q. Did you believe it was a flawed	15	Q. Do you know how he was staying
15 16	sales process?	16	apprised of the deal?
17		17	A. He was, again, physically on site,
18	the question.	18	working on the transition there was a team
19		19	working on the Transition Services Agreement
		20	
20			
20	details.		and they were physically on site working on it.
20 21	details. Q. Did you were you aware after the	21	I can't remember what law firm.
202122	details. Q. Did you were you aware after the sale hearing on Friday night that the parties	21 22	I can't remember what law firm. Q. Was he at Weil Gotshal the weekend,
20 21 22 23	details. Q. Did you were you aware after the sale hearing on Friday night that the parties continued to work on finalizing the sale	212223	I can't remember what law firm. Q. Was he at Weil Gotshal the weekend, that Saturday and Sunday, when the deal papers
202122	details. Q. Did you were you aware after the sale hearing on Friday night that the parties	21 22	I can't remember what law firm. Q. Was he at Weil Gotshal the weekend,

	D 06		5 0.7
1	Page 26		Page 27
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	Weil. I believe so.	2	Q. Let me just start over again.
3	Q. Was anyone else from Alvarez over at	3	On document 487 do you recognize
4	Weil?	4	that as an e-mail from yourself dated September
5	A. I don't think so. I don't recall,	5	22nd, 2008?
6	but I don't think so.	6	A. Yes.
7	Q. Let me go ahead and show you a	7	Q. And there is a couple of back and
8	document previously marked as 487.	8	forth e-mails here involving you.
9	(Document review.)	9	John Suckow, can you tell me what
10	Q. Do you recognize this as an e-mail	10	his role was?
11	from yourself dated September 22nd, 2008?	11	A. I am trying I don't recall John's
12	A. Are you asking me about both of	12	title, but, again, John, David Coles and I were
13	these things? Just so I understand what I am	13	working for Brian on the matter, on Lehman, the
		14	Lehman matter.
14	referring to.		
15	Q. Let me see that.	15	Q. And were you trying to keep some of
16	A. (Handing.)	16	your colleagues up to date about the final
17	Q. No.	17	discussions over the weekend at Weil concerning
18	A. Okay.	18	the transaction?
19	MR. TAMBE: Put 488 away? Are you	19	A. Yes.
20	going to ask about there is a 488	20	Q. And at the bottom it says: "The M&A
21	attached.	21	deal was that Barclays was getting about 47
22	MR. THOMAS: Just go ahead and take	22	billion in trading assets." Do you see that?
23	that. It must have just got stapled in the	23	A. Yes.
24	production process.	24	Q. Do you know where you got that
25	A. So yes, I am familiar with this.	25	information from?
۲J	71. 50 yes, I am familiar with this.	22	information from:
	Page 28		Page 29
1		1	
1 2	Fogarty - Highly Confidential	1 2	Fogarty - Highly Confidential
2	Fogarty - Highly Confidential A. This was all secondhand information	1 2 3	Fogarty - Highly Confidential Q. And was this part of your continuing
2 3	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in	3	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date
2 3 4	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from	3 4	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and
2 3 4 5	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices.	3 4 5	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process?
2 3 4 5 6	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on	3 4 5 6	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and
2 3 4 5 6 7	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it	3 4 5 6 7	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated.
2 3 4 5 6 7 8	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of	3 4 5 6 7 8	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them
2 3 4 5 6 7 8 9	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the	3 4 5 6 7 8 9	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning
2 3 4 5 6 7 8 9	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank	3 4 5 6 7 8 9	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time?
2 3 4 5 6 7 8 9 10 11	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays."	3 4 5 6 7 8 9 10	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection.
2 3 4 5 6 7 8 9 10 11 12	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays." Is it your understanding that	3 4 5 6 7 8 9 10 11	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection. Q. Strike that.
2 3 4 5 6 7 8 9 10 11 12 13	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays." Is it your understanding that Barclays was undertaking a lot of risk in doing	3 4 5 6 7 8 9 10 11 12	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection. Q. Strike that. Is that Greenwich mean time there?
2 3 4 5 6 7 8 9 10 11 12 13 14	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays." Is it your understanding that	3 4 5 6 7 8 9 10 11 12 13 14	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection. Q. Strike that.
2 3 4 5 6 7 8 9 10 11 12 13	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays." Is it your understanding that Barclays was undertaking a lot of risk in doing	3 4 5 6 7 8 9 10 11 12	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection. Q. Strike that. Is that Greenwich mean time there?
2 3 4 5 6 7 8 9 10 11 12 13 14	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays." Is it your understanding that Barclays was undertaking a lot of risk in doing this transaction?	3 4 5 6 7 8 9 10 11 12 13 14	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection. Q. Strike that. Is that Greenwich mean time there? Strike that.
2 3 4 5 6 7 8 9 10 11 12 13 14 15	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays." Is it your understanding that Barclays was undertaking a lot of risk in doing this transaction? MR. TAMBE: Object to the form of	3 4 5 6 7 8 9 10 11 12 13 14 15	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection. Q. Strike that. Is that Greenwich mean time there? Strike that. Why were you trying to keep your colleagues up to date in a timely fashion
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays." Is it your understanding that Barclays was undertaking a lot of risk in doing this transaction? MR. TAMBE: Object to the form of the question. A. I don't know.	3 4 5 6 7 8 9 0 11 2 13 14 15 16 17	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection. Q. Strike that. Is that Greenwich mean time there? Strike that. Why were you trying to keep your colleagues up to date in a timely fashion concerning the final deal negotiations over the
2 3 4 5 6 7 8 9 10 11 2 13 14 15 16 17 18	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays." Is it your understanding that Barclays was undertaking a lot of risk in doing this transaction? MR. TAMBE: Object to the form of the question. A. I don't know. Q. Let me go ahead and ask you to look	3 4 5 6 7 8 9 10 11 2 3 14 15 16 17 18	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection. Q. Strike that. Is that Greenwich mean time there? Strike that. Why were you trying to keep your colleagues up to date in a timely fashion concerning the final deal negotiations over the weekend at Weil?
2 3 4 5 6 7 8 9 1 1 1 2 1 1 1 1 1 1 1 1 1 1 1 1 1	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays." Is it your understanding that Barclays was undertaking a lot of risk in doing this transaction? MR. TAMBE: Object to the form of the question. A. I don't know. Q. Let me go ahead and ask you to look at 488 now.	3 4 5 6 7 8 9 10 1 1 2 3 4 1 5 6 7 1 8 9 1 1 2 3 4 1 5 1 6 7 1 8 1 9	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection. Q. Strike that. Is that Greenwich mean time there? Strike that. Why were you trying to keep your colleagues up to date in a timely fashion concerning the final deal negotiations over the weekend at Weil? A. We are very concerned about the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays." Is it your understanding that Barclays was undertaking a lot of risk in doing this transaction? MR. TAMBE: Object to the form of the question. A. I don't know. Q. Let me go ahead and ask you to look at 488 now. (Document review.)	3 4 5 6 7 8 9 0 1 2 3 4 1 5 6 7 8 9 0 1 2 3 4 1 5 1 2 0	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection. Q. Strike that. Is that Greenwich mean time there? Strike that. Why were you trying to keep your colleagues up to date in a timely fashion concerning the final deal negotiations over the weekend at Weil? A. We are very concerned about themaking sure that the TSA goes as well as it can
23456789011213415617 192021	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays." Is it your understanding that Barclays was undertaking a lot of risk in doing this transaction? MR. TAMBE: Object to the form of the question. A. I don't know. Q. Let me go ahead and ask you to look at 488 now. (Document review.) A. Okay.	3 4 5 6 7 8 9 0 11 2 13 14 15 16 17 18 9 20 21	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection. Q. Strike that. Is that Greenwich mean time there? Strike that. Why were you trying to keep your colleagues up to date in a timely fashion concerning the final deal negotiations over the weekend at Weil? A. We are very concerned about the making sure that the TSA goes as well as it can so that we can have the TSA meaning the
234567890112 1121314567890121 2122	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays." Is it your understanding that Barclays was undertaking a lot of risk in doing this transaction? MR. TAMBE: Object to the form of the question. A. I don't know. Q. Let me go ahead and ask you to look at 488 now. (Document review.) A. Okay. Q. Do you recognize this as an e-mail	3 4 5 6 7 8 9 0 1 1 2 3 1 4 1 5 6 7 8 9 0 1 2 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection. Q. Strike that. Is that Greenwich mean time there? Strike that. Why were you trying to keep your colleagues up to date in a timely fashion concerning the final deal negotiations over the weekend at Weil? A. We are very concerned about the making sure that the TSA goes as well as it can so that we can have the TSA meaning the Transition Services Agreement, so that we can,
234567890112314 101212223	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays." Is it your understanding that Barclays was undertaking a lot of risk in doing this transaction? MR. TAMBE: Object to the form of the question. A. I don't know. Q. Let me go ahead and ask you to look at 488 now. (Document review.) A. Okay. Q. Do you recognize this as an e-mail to a number of your colleagues dated September	3 4 5 6 7 8 9 0 1 1 2 3 4 1 5 6 7 8 9 0 1 2 3 4 1 5 6 7 8 9 0 1 2 2 2 3	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection. Q. Strike that. Is that Greenwich mean time there? Strike that. Why were you trying to keep your colleagues up to date in a timely fashion concerning the final deal negotiations over the weekend at Weil? A. We are very concerned about the making sure that the TSA goes as well as it can so that we can have the TSA meaning the Transition Services Agreement, so that we can, you know, have an effective process to manage
234567890112 1121314567890121 2122	Fogarty - Highly Confidential A. This was all secondhand information coming through Bill Gordon's understanding in Weil's offices, which was secondhand from others in the Weil offices. Q. And the last sentence beginning on this page and continuing over to the other, it says: "Barclays does not have that kind of capital, so playing it out, this has the potential to not only tank our deal but tank Barclays." Is it your understanding that Barclays was undertaking a lot of risk in doing this transaction? MR. TAMBE: Object to the form of the question. A. I don't know. Q. Let me go ahead and ask you to look at 488 now. (Document review.) A. Okay. Q. Do you recognize this as an e-mail	3 4 5 6 7 8 9 0 1 1 2 3 1 4 1 5 6 7 8 9 0 1 2 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential Q. And was this part of your continuing effort to keep your colleagues up to date concerning the final deal negotiations and documenting process? A. Yes. I am keeping, yes, Brian and others updated. Q. Okay. And why were you keeping them updated about the deal at 4:16 in the morning Greenwich mean time? MR. TAMBE: Objection. Q. Strike that. Is that Greenwich mean time there? Strike that. Why were you trying to keep your colleagues up to date in a timely fashion concerning the final deal negotiations over the weekend at Weil? A. We are very concerned about the making sure that the TSA goes as well as it can so that we can have the TSA meaning the Transition Services Agreement, so that we can,

		4 01	
	Page 30		Page 31
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
1 2	transaction should it close.	2	that is my yeah, that's my interpretation of
3	Q. The last sentence you write:	3	it based on the fact that Robert was working
4	"Robert, let's continue to hold back	4	for me on communication, employee
5	communication until we get the TSA closure."	5	communication.
6	What did you mean by "continue to	6	MR. THOMAS: Let me show you a
7	hold back communication"?	7	document that we will mark as 562-B.
8	A. I can't recall specifically	8	(Exhibit 562-B, e-mail dated
9	what the but there was an intent to	9	9/27/2008, Bates stamped WGM-LEHMAN-E
10	communicate to the employees of the estate or	10	00000812 through WGM-LEHMAN-E 00000815,
11	Lehman in conjunction with this transaction.	11	marked for identification.)
12	Q. Is that an actual recollection that	12	Q. If you would like, please go ahead
13	you have that that's what you meant by this,	13	and take a moment to read through this e-mail
14	"let's continue to hold back communication" was	14	chain.
15	hold back communication with the employees of	15	(Document review.)
16	Lehman?	16	A. Okay.
17	A. Absolutely, yes.	17	Q. Do you recognize this as an e-mail
18	Q. That's your recollection, you are	18	chain that you were involved with on September
19	not speculating, you recall that's what you	19	27th, 2008?
20	meant?	20	A. Yes.
21	A. Yes, because Robert Hershan, his	21	Q. And if you look at I guess the
22	responsibility for me was human resources and	22	second oldest in time e-mail, the earliest
23	communication, so that well I don't	23	e-mail appears to be an e-mail from Weil to
24	have let me say I don't have a direct	24	yourself on Friday, September 26th. Do you see
25	recollection of the writing of the e-mail, but	25	that?
		+	
	Page 32		Page 33
1	Page 32 Fogarty - Highly Confidential	1	
1 2			Fogarty - Highly Confidential
	Fogarty - Highly Confidential	1	
2	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time	1 2	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets
2	Fogarty - Highly Confidential A. Yes.	1 2 3	Fogarty - Highly Confidential sure you understood what assets and liabilities
2 3 4	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of	1 2 3 4	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on
2 3 4 5	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike	1 2 3 4 5	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this
2 3 4 5 6	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that.	1 2 3 4 5 6	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here.
2 3 4 5 6	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on	1 2 3 4 5 6 7	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of
2 3 4 5 6 7 8	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez	1 2 3 4 5 6 7 8	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here.
2 3 4 5 6 7 8 9	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people?	1 2 3 4 5 6 7 8 9	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to
2 3 4 5 6 7 8 9	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people? A. Yes. Well, let me just	1 2 3 4 5 6 7 8 9	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to Barclays? A. Correct.
2 3 4 5 6 7 8 9 10	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people? A. Yes. Well, let me just double-check. Yes.	1 2 3 4 5 6 7 8 9 10	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to Barclays?
2 3 4 5 6 7 8 9 10 11 12	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people? A. Yes. Well, let me just double-check. Yes. Q. Towards the bottom of your e-mail	1 2 3 4 5 6 7 8 9 10 11 12	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to Barclays? A. Correct. Q. And did you try to do this?
2 3 4 5 6 7 8 9 10 11 12 13	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people? A. Yes. Well, let me just double-check. Yes. Q. Towards the bottom of your e-mail where you write "a few thoughts," you write: "After you guys spend a little time with these	1 2 3 4 5 6 7 8 9 10 11 12 13	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to Barclays? A. Correct. Q. And did you try to do this? A. Yes. Q. Then the next e-mail chain next
2 3 4 5 6 7 8 9 10 11 12 13 14	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people? A. Yes. Well, let me just double-check. Yes. Q. Towards the bottom of your e-mail where you write "a few thoughts," you write:	1 2 3 4 5 6 7 8 9 10 11 12 13 14	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to Barclays? A. Correct. Q. And did you try to do this? A. Yes. Q. Then the next e-mail chain next e-mail response in this chain is from Brian
2 3 4 5 6 7 8 9 10 11 12 13 14 15	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people? A. Yes. Well, let me just double-check. Yes. Q. Towards the bottom of your e-mail where you write "a few thoughts," you write: "After you guys spend a little time with these things we should probably arrange a call with	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to Barclays? A. Correct. Q. And did you try to do this? A. Yes. Q. Then the next e-mail chain next e-mail response in this chain is from Brian Marsal to yourself.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people? A. Yes. Well, let me just double-check. Yes. Q. Towards the bottom of your e-mail where you write "a few thoughts," you write: "After you guys spend a little time with these things we should probably arrange a call with the Barclays guys (aka former Lehman - the guys at the table early Monday morning were	1 2 3 4 5 6 7 8 9 10 11 21 3 14 15 16	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to Barclays? A. Correct. Q. And did you try to do this? A. Yes. Q. Then the next e-mail chain next e-mail response in this chain is from Brian Marsal to yourself. Can you identify Mr. Marsal's
2 3 4 5 6 7 8 9 10 11 12 13 14 15 6 17	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people? A. Yes. Well, let me just double-check. Yes. Q. Towards the bottom of your e-mail where you write "a few thoughts," you write: "After you guys spend a little time with these things we should probably arrange a call with the Barclays guys (aka former Lehman - the guys	1 2 3 4 5 6 7 8 9 0 11 12 13 14 15 6 7	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to Barclays? A. Correct. Q. And did you try to do this? A. Yes. Q. Then the next e-mail chain next e-mail response in this chain is from Brian Marsal to yourself. Can you identify Mr. Marsal's position?
2 3 4 5 6 7 8 9 10 11 2 13 14 15 16 17 18	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people? A. Yes. Well, let me just double-check. Yes. Q. Towards the bottom of your e-mail where you write "a few thoughts," you write: "After you guys spend a little time with these things we should probably arrange a call with the Barclays guys (aka former Lehman - the guys at the table early Monday morning were apparently Paolo and Alex Kirk) and Weil to make sure we all understand these details and	1 2 3 4 5 6 7 8 9 0 11 2 13 14 15 6 17 18	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to Barclays? A. Correct. Q. And did you try to do this? A. Yes. Q. Then the next e-mail chain next e-mail response in this chain is from Brian Marsal to yourself. Can you identify Mr. Marsal's position? A. Where is the e-mail from Brian?
2 3 4 5 6 7 8 9 10 11 2 13 4 15 6 17 8 9 19	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people? A. Yes. Well, let me just double-check. Yes. Q. Towards the bottom of your e-mail where you write "a few thoughts," you write: "After you guys spend a little time with these things we should probably arrange a call with the Barclays guys (aka former Lehman - the guys at the table early Monday morning were apparently Paolo and Alex Kirk) and Weil to make sure we all understand these details and make sure these are disseminated appropriately	1 2 3 4 5 6 7 8 9 0 11 12 13 14 15 16 17 18 19 20	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to Barclays? A. Correct. Q. And did you try to do this? A. Yes. Q. Then the next e-mail chain next e-mail response in this chain is from Brian Marsal to yourself. Can you identify Mr. Marsal's position? A. Where is the e-mail from Brian? Q. I believe it's the very bottom
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 9 20	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people? A. Yes. Well, let me just double-check. Yes. Q. Towards the bottom of your e-mail where you write "a few thoughts," you write: "After you guys spend a little time with these things we should probably arrange a call with the Barclays guys (aka former Lehman - the guys at the table early Monday morning were apparently Paolo and Alex Kirk) and Weil to make sure we all understand these details and make sure these are disseminated appropriately through Barclays - so there is no confusion	1 2 3 4 5 6 7 8 9 0 1 1 2 3 1 4 1 5 6 7 1 8 9 0 1 2 1 2 1 3 1 4 1 5 6 7 1 8 9 0 2 1	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to Barclays? A. Correct. Q. And did you try to do this? A. Yes. Q. Then the next e-mail chain next e-mail response in this chain is from Brian Marsal to yourself. Can you identify Mr. Marsal's position? A. Where is the e-mail from Brian? Q. I believe it's the very bottom next it's the response.
2 3 4 5 6 7 8 9 10 11 2 13 14 15 6 17 8 9 2 1 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people? A. Yes. Well, let me just double-check. Yes. Q. Towards the bottom of your e-mail where you write "a few thoughts," you write: "After you guys spend a little time with these things we should probably arrange a call with the Barclays guys (aka former Lehman - the guys at the table early Monday morning were apparently Paolo and Alex Kirk) and Weil to make sure we all understand these details and make sure these are disseminated appropriately through Barclays - so there is no confusion about "what stuff be ours", and to ensure	1 2 3 4 5 6 7 8 9 0 1 1 2 1 3 1 4 1 5 6 1 7 1 8 1 9 2 0 1 2 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to Barclays? A. Correct. Q. And did you try to do this? A. Yes. Q. Then the next e-mail chain next e-mail response in this chain is from Brian Marsal to yourself. Can you identify Mr. Marsal's position? A. Where is the e-mail from Brian? Q. I believe it's the very bottom next it's the response. A. Oh, I see. It's cut over on the
2 3 4 5 6 7 8 9 0 1 1 2 1 3 4 1 5 6 7 1 8 9 0 1 2 2 2 3	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people? A. Yes. Well, let me just double-check. Yes. Q. Towards the bottom of your e-mail where you write "a few thoughts," you write: "After you guys spend a little time with these things we should probably arrange a call with the Barclays guys (aka former Lehman - the guys at the table early Monday morning were apparently Paolo and Alex Kirk) and Weil to make sure we all understand these details and make sure these are disseminated appropriately through Barclays - so there is no confusion about "what stuff be ours", and to ensure appropriate security controls (which the TSA	1 2 3 4 5 6 7 8 9 0 11 12 3 14 15 16 7 18 19 20 21 22 23	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to Barclays? A. Correct. Q. And did you try to do this? A. Yes. Q. Then the next e-mail chain next e-mail response in this chain is from Brian Marsal to yourself. Can you identify Mr. Marsal's position? A. Where is the e-mail from Brian? Q. I believe it's the very bottom next it's the response. A. Oh, I see. It's cut over on the other page.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 12 21 22	Fogarty - Highly Confidential A. Yes. Q. And then the next earliest in time is an e-mail from yourself to quite a number of people at both Alvarez and well, strike that. The folks you are e-mailing on Friday, September 26, are those all Alvarez people? A. Yes. Well, let me just double-check. Yes. Q. Towards the bottom of your e-mail where you write "a few thoughts," you write: "After you guys spend a little time with these things we should probably arrange a call with the Barclays guys (aka former Lehman - the guys at the table early Monday morning were apparently Paolo and Alex Kirk) and Weil to make sure we all understand these details and make sure these are disseminated appropriately through Barclays - so there is no confusion about "what stuff be ours", and to ensure	1 2 3 4 5 6 7 8 9 0 1 1 2 1 3 1 4 1 5 6 1 7 1 8 1 9 2 0 1 2 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential sure you understood what assets and liabilities went over with the transaction and what assets and liabilities stayed with Lehman? A. This was more this was focused on what assets were remaining with us, this comment here. Q. And is that a function of understanding what assets went over to Barclays? A. Correct. Q. And did you try to do this? A. Yes. Q. Then the next e-mail chain next e-mail response in this chain is from Brian Marsal to yourself. Can you identify Mr. Marsal's position? A. Where is the e-mail from Brian? Q. I believe it's the very bottom next it's the response. A. Oh, I see. It's cut over on the

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1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	A. Yes, I recall.	2	Q. And turning to the previous page
3	Q. Okay. And can you what was	3	where you are writing back to Harvey Miller, do
4	Mr. Marsal's position at this time?	4	you see that?
5	A. Chief restructuring officer.	5	A. Yes.
6	Q. For Lehman?	6	Q. You write: "I spent some time on
7	A. Correct.	7	this with David Murgio of your shop last night.
	Q. He writes: "Jim, I think that your	8	We plan to get a group together for a
8	team needs to be the fail safe on both the	9	walk-through of the final deal and detailed
10		10	
	Barclays and Bain transaction to outline what	11	schedules early next week, including a number
11	was sold and what was kept per the agreement		of people from Weil, Lehman, Alvarez."
12 13	and confirm that that is actually what	12	Did you go ahead and do that?
13	happened. Can you take responsibility and	13	A. We did. At least with some parts of
14	develop a plan to complete the above."	14	this group. I can't recall all of the folks.
15	Did you, in fact, undertake that	15	Q. Let me show you a document
16	responsibility?	16	previously marked as Exhibit 464-A.
17	A. I undertook I undertook it	17	(Document review.)
18	initially and elements of it then would	18	Q. Do you recognize this as an e-mail
19	transfer to David Coles and his team.	19	chain that you were involved with?
20	Q. So part of the assignment was to	20	A. Yes.
21 22	first understand what was sold and kept per the	21	Q. And do you recognize the attachments
22	agreement, and the other part was to make sure	22	to the e-mail?
23	that that's what actually happened, both parts	23	A. Yes.
24	of that?	24	Q. And the initial e-mail appears to be
25	A. Correct.	25	from Glenn West to a number of people at
Z O	71. Correct.	23	from Gleim West to a number of people at
25			
	Page 36		Page 37
	Page 36 Fogarty - Highly Confidential	1	Page 37 Fogarty - Highly Confidential
	Page 36 Fogarty - Highly Confidential Alvarez dated September 27th?	1 2	Page 37 Fogarty - Highly Confidential MR. TAMBE: I don't either.
1 2 3	Page 36 Fogarty - Highly Confidential Alvarez dated September 27th? MR. TAMBE: Objection. I'm not sure	1 2 3	Page 37 Fogarty - Highly Confidential MR. TAMBE: I don't either. MR. MILLS: It looks like 89 through
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1 2 3 4 5 6 7 8 9 10 11 12 13 14	Fogarty - Highly Confidential Alvarez dated September 27th? MR. TAMBE: Objection. I'm not sure you are reading that right. Q. Okay. Let me start over again. Well, there is an initial forwarding. Do you recall receiving this e-mail that begins on the bottom of the first page, which is 2287, from Weil Gotshal? A. I don't recall it. Q. But you recall the attachments and you recall getting the attached from Weil Gotshal in this time frame? A. I recall this attempt to recap	1 2 3 4 5 6 7 8 9 10 11 12 13	Fogarty - Highly Confidential MR. TAMBE: I don't either. MR. MILLS: It looks like 89 through 92. MR. THOMAS: Okay, in this document apparently there is two. It's out of order. This is Q. Exhibit 464-A has two attachments to it and they may be in reversed order at least in terms of the Bates stamping. A. Okay. Q. So looking at Exhibit 464-A and the attachment at A&M Bates stamp 2289, do you see the bottom bullet point that says: "During the
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1 2 3 4 5 6 7 8 9 0 1 1 2 1 3 1 4 1 5 6 1 7 1 8 9 2 1 2 2 2 2	Fogarty - Highly Confidential Alvarez dated September 27th? MR. TAMBE: Objection. I'm not sure you are reading that right. Q. Okay. Let me start over again. Well, there is an initial forwarding. Do you recall receiving this e-mail that begins on the bottom of the first page, which is 2287, from Weil Gotshal? A. I don't recall it. Q. But you recall the attachments and you recall getting the attached from Weil Gotshal in this time frame? A. I recall this attempt to recap assets and liability of the transaction. Q. And you don't have any reason to believe you didn't receive this A. No. Q document at the time indicated on the face of the e-mail? A. No. Q. And looking at the attachment, if	1 2 3 4 5 6 7 8 9 0 11 12 13 14 15 16 17 18 19 20 21 22 22	Fogarty - Highly Confidential MR. TAMBE: I don't either. MR. MILLS: It looks like 89 through 92. MR. THOMAS: Okay, in this document apparently there is two. It's out of order. This is Q. Exhibit 464-A has two attachments to it and they may be in reversed order at least in terms of the Bates stamping. A. Okay. Q. So looking at Exhibit 464-A and the attachment at A&M Bates stamp 2289, do you see the bottom bullet point that says: "During the period of 60 days following the closing Barclays has the right to assume or reject contracts that are related to the assets that it has purchased from the Lehman entities"? A. Yes. Q. Is that consistent with your understanding of the deal at the time? MR. TAMBE: Objection to the form of

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	Page 38		Page 39
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	perfect clarity on contracts wasn't perfect	2	Q. So was Bill Gordon trying to figure
3	clarity on these contracts as to who was going	3	out which contracts were going to be assumed by
4	to need what contracts to run the respective	4	Barclays and which were not to understand which
5	businesses and this was the way that the	5	contracts Lehman would still be responsible
6	agreement had my understanding that Barclays	6	for?
7	had the 6 this some day period, I don't	7	A. Correct.
8	recall 60 days, but had some days to make some	8	Q. And if you would turn the page,
9	determinations on these contracts.	9	please, to Bates stamp 2290, do you remember
10		10	receiving this chart from Weil?
11		11	A. I don't recall this chart.
12	Barclays' discretion in choosing what contracts	12	Q. Do you know if this chart was sent
13	to accept, correct?	13	
14	*	14	to Alvarez to help Alvarez understand
	<u> </u>	15	consistent with the assignment of understanding
15	1		what assets went over pursuant to the agreement
16 17	· · · · · · · · · · · · · · · · · · ·	<mark>16</mark> 17	and which didn't?
17	8		MR. TAMBE: Objection to the form of
18		18	the question.
19		19	A. I don't recall this being something
20	· · · · · · · · · · · · · · · · · · ·	20	we focused on, that I I didn't focus on this
21		21	table.
22		22	Q. You don't recall why Weil Gotshal
23	C 1	23	was sending to you on September 27th a chart
24	1 &	24	listing the assets that were included as
25	what I recall on this.	25	purchased assets and those that were excluded
	Page 40		Page 41
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	as assets?	2	that I wasn't part of and understanding how it
3	A. I recall this document. I don't	3	all came together was incredibly difficult.
4	recall this table.	4	Q. Were there any assets that you
5	Q. Do you recall why Weil Gotshal was	5	recall that were transferred as part of the
6	sending you this information concerning the	6	sale agreement that weren't identified in the
7	deal?	7	sale documents?
8	A. I recall	8	A. Restate.
9	MR. TAMBE: Object to form.	9	Q. Were you aware of any assets that
10	Go ahead.	10	were transferred as part of the agreement that
11		11	you didn't believe were reflected in the sale
12		12	agreement?
13		13	A. There was, I recall, people working
14	Q. What does that mean, what the estate	14	on things like stadium tickets, all sorts of
15	had left to match?	15	things, and trying to figure out what was
16		16	transferred and what was not and I remember
17		17	people working on that process.
18		18	
19		19	Q. Let me ask you to look at another
		20	part of the attachment here, which is AM 2293.
20		21	It's a document entitled Lehman Bothers Paraloga Transaction Division of Assets and
21 22		22	Barclays Transaction, Division of Assets and
		23	Liabilities. Do you recognize this document?
23		24	(Document review.)
2425		24 25	A. I recall this document being prepared by Weil. I can't say I recall the
111	COMPACT II WAS SCHOOLINGS ONG CONVERSIONS		DIEDALEG DV WEIL I CAD I SAV I TECAH IDE

_	Pg 14	1 01	107
	Page 42		Page 43
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	I recall all of this detail or this detail.	2	A. No.
3	Q. Do you recall seeing this document?	3	Q. Well, did you understand that after
4	A. Yes, I recall this document.	4	you got this document and read it?
5	Q. And under did you understand this	5	A. I understood that there were a lot
6	to be describing which assets were included in	6	of documents trying to pull together that
7	the sale transaction?	7	tried to clarification letters and documents
8	MR. TAMBE: Object to the form of	8	and schedules and we had a process to try to
9	the question.	9	*
	.	10	understand numerically, you know, what that
10	A. Did I I'm sorry, rephrase. Did	11	left us with, what exactly did we have left, I
11 12	I		mean, sort of detail trying to understand
12	Q. Did you understand this document to	12	exactly what securities we had left.
13	be describing the assets that were included in	13	Q. In roughly this time period of
14	the sale transaction with Barclays?	14	September 27th, you understood that as part of
15	A. Yes.	15	the sale transaction Barclays was getting all
16	Q. And on 2293 under Purchased Assets	16	the collateral associated with the repo;
17	and under Security and Trading Operations do	17	correct?
18	you see the first bullet point that says: "The	18	MR. TAMBE: Objection. Asked and
19	securities set forth on Schedule A to the	19	answered.
20	Clarification Letter, i.e., the securities	20	A. I did not understand I did not
21	subject to the Barclays repurchase agreement"?	21	understand the transaction completely.
22 23	A. I see that.	22	Q. Not my question.
23	Q. Did you understand at this time that	23	The question is you understood that
24	Barclays was acquiring all of the collateral	24	as part of the sale transaction all of the
25	associated with the Fed repo loan?	25	collateral associated with what was the Fed
	Page 44		Page 45
1	Fogarty - Highly Confidential		Fogarty - Highly Confidential
2	repo do you know what I am referring to when	2	A. I believe that was the case.
3	I say the Fed repo?	3	Q. Okay. And you in this rough time
4	A. I do.	4	frame you would have reviewed the Clarification
5 6	Q. And you know there was collateral	5	Letter?
	associated with that repo?	6	A. Made an attempt to understand it,
7	A. Yes.	7	yes.
8	Q. And you understood that all of that	8	Q. Okay. So you read it and you saw in
9	collateral was supposed to be conveyed to	9	there that it transferred the Fed repo
10		10	
	Barclays as part of the sale transaction;		collateral to Barclays; correct?
11	correct?	11	MR. TAMBE: Objection to the form of
11 12	correct? A. I don't know about all. I know that	11 12	MR. TAMBE: Objection to the form of the question.
11 12 13	correct? A. I don't know about all. I know that collateral was associated with that Fed repo	11 12 13	MR. TAMBE: Objection to the form of the question. A. I recall the Fed repo. I don't
11 12 13 14	correct? A. I don't know about all. I know that	11 12 13 14	MR. TAMBE: Objection to the form of the question.
11 12 13 14 15	correct? A. I don't know about all. I know that collateral was associated with that Fed repo	11 12 13 14 15	MR. TAMBE: Objection to the form of the question. A. I recall the Fed repo. I don't
11 12 13 14 15 16	A. I don't know about all. I know that collateral was associated with that Fed repo and that was supposed to be that was	11 12 13 14	MR. TAMBE: Objection to the form of the question. A. I recall the Fed repo. I don't recall whether it was in the Clarification
11 12 13 14 15	A. I don't know about all. I know that collateral was associated with that Fed repo and that was supposed to be that was supposed to be part of this transaction.	11 12 13 14 15	MR. TAMBE: Objection to the form of the question. A. I recall the Fed repo. I don't recall whether it was in the Clarification Letter or not.
11 12 13 14 15 16	correct? A. I don't know about all. I know that collateral was associated with that Fed repo and that was supposed to be that was supposed to be part of this transaction. Q. Did you ever have a belief that some	11 12 13 14 15 16	MR. TAMBE: Objection to the form of the question. A. I recall the Fed repo. I don't recall whether it was in the Clarification Letter or not. Q. Let me go ahead and show you a
11 12 13 14 15 16 17	A. I don't know about all. I know that collateral was associated with that Fed repo and that was supposed to be that was supposed to be part of this transaction. Q. Did you ever have a belief that some portion of the repo was supposed to not be	11 12 13 14 15 16 17	MR. TAMBE: Objection to the form of the question. A. I recall the Fed repo. I don't recall whether it was in the Clarification Letter or not. Q. Let me go ahead and show you a document marked 25, and we will come back to
11 12 13 14 15 16 17 18	correct? A. I don't know about all. I know that collateral was associated with that Fed repo and that was supposed to be that was supposed to be part of this transaction. Q. Did you ever have a belief that some portion of the repo was supposed to not be transferred to Barclays? A. No.	11 12 13 14 15 16 17 18	MR. TAMBE: Objection to the form of the question. A. I recall the Fed repo. I don't recall whether it was in the Clarification Letter or not. Q. Let me go ahead and show you a document marked 25, and we will come back to the current document so you can just leave it there. This is a copy.
11 12 13 14 15 16 17 18 19 20	A. I don't know about all. I know that collateral was associated with that Fed repo and that was supposed to be that was supposed to be part of this transaction. Q. Did you ever have a belief that some portion of the repo was supposed to not be transferred to Barclays? A. No. Q. Okay. And you understood that what	11 12 13 14 15 16 17 18 19 20	MR. TAMBE: Objection to the form of the question. A. I recall the Fed repo. I don't recall whether it was in the Clarification Letter or not. Q. Let me go ahead and show you a document marked 25, and we will come back to the current document so you can just leave it there. This is a copy. Do you recognize Exhibit 25?
11 12 13 14 15 16 17 18 19 20 21	A. I don't know about all. I know that collateral was associated with that Fed repo and that was supposed to be that was supposed to be part of this transaction. Q. Did you ever have a belief that some portion of the repo was supposed to not be transferred to Barclays? A. No. Q. Okay. And you understood that what Weil is telling you here is confirming that all	11 12 13 14 15 16 17 18 19 20 21	MR. TAMBE: Objection to the form of the question. A. I recall the Fed repo. I don't recall whether it was in the Clarification Letter or not. Q. Let me go ahead and show you a document marked 25, and we will come back to the current document so you can just leave it there. This is a copy. Do you recognize Exhibit 25? (Document review.)
11 12 13 14 15 16 17 18 19 20 21 22	A. I don't know about all. I know that collateral was associated with that Fed repo and that was supposed to be that was supposed to be part of this transaction. Q. Did you ever have a belief that some portion of the repo was supposed to not be transferred to Barclays? A. No. Q. Okay. And you understood that what Weil is telling you here is confirming that all of the repo collateral was included as a	11 12 13 14 15 16 17 18 19 20 21 22	MR. TAMBE: Objection to the form of the question. A. I recall the Fed repo. I don't recall whether it was in the Clarification Letter or not. Q. Let me go ahead and show you a document marked 25, and we will come back to the current document so you can just leave it there. This is a copy. Do you recognize Exhibit 25? (Document review.)
11 12 13 14 15 16 17 18 19 20 21 22 23	A. I don't know about all. I know that collateral was associated with that Fed repo and that was supposed to be that was supposed to be part of this transaction. Q. Did you ever have a belief that some portion of the repo was supposed to not be transferred to Barclays? A. No. Q. Okay. And you understood that what Weil is telling you here is confirming that all of the repo collateral was included as a purchased asset; right?	11 12 13 14 15 16 17 18 19 20 21 22 23	MR. TAMBE: Objection to the form of the question. A. I recall the Fed repo. I don't recall whether it was in the Clarification Letter or not. Q. Let me go ahead and show you a document marked 25, and we will come back to the current document so you can just leave it there. This is a copy. Do you recognize Exhibit 25? (Document review.) A. I do not. (Document review.)
11 12 13 14 15 16 17 18 19 20 21 22	A. I don't know about all. I know that collateral was associated with that Fed repo and that was supposed to be that was supposed to be part of this transaction. Q. Did you ever have a belief that some portion of the repo was supposed to not be transferred to Barclays? A. No. Q. Okay. And you understood that what Weil is telling you here is confirming that all of the repo collateral was included as a	11 12 13 14 15 16 17 18 19 20 21 22	MR. TAMBE: Objection to the form of the question. A. I recall the Fed repo. I don't recall whether it was in the Clarification Letter or not. Q. Let me go ahead and show you a document marked 25, and we will come back to the current document so you can just leave it there. This is a copy. Do you recognize Exhibit 25? (Document review.) A. I do not.

	Pg 148	1 01 .	±∨¬	
	Page 46		Page 47	
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential	
2	MR. THOMAS: No, but what he is	2	agreement among purchaser and/or its affiliate	
3	doing is good, flipping through it.	3	and LBI and/or its affiliates and the Bank of	
4	MR. TAMBE: So you want him to flip	4	New York as collateral agent (the Barclays	
5	through it?	5	repurchase agreement) shall be deemed to	
6	MR. THOMAS: Yes.	6	constitute part of the purchased assets in	
7		7		
8	(Document review.)	8	accordance with paragraph 1(a)(ii) above." Do you see that?	
9	A. Okay.Q. Having had a chance to now flip	9	A. I see those words.	
10		10	Q. Okay. And when it says "all securities and others assets," do you	
11				
1 2		12		
12 13	A. I do.	13	understand that to be conveying all of the repo	
14		14	collateral to Barclays as part of the sale	
		15		
15			transaction? MR. TAMBE: Objection to the form of	
16	r o	16	the question.	
17		17 18	A. I do.	
18			Q. Does this refresh your recollection	
19		19	that, in fact, all of the repo collateral was	
20		20	being conveyed to Barclays as part of the sale	
21		21	transaction?	
22	13 of page 5 entitled Barclays Purchase	22	A. That is my understanding.	
23		23	Q. And was that your understanding at	
24	J I	24	the time?	
25	under the September 18th, 2008 repurchase	25	A. I haven't looked at any of this	
			→	
	Page 48		Page 49	
1	Page 48	1	Page 49	
1 2	Page 48 Fogarty - Highly Confidential	1 2	Page 49 Fogarty - Highly Confidential	
2	Page 48 Fogarty - Highly Confidential since April, prior to April of this year, so I		Page 49	
2	Fage 48 Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details.	2 3	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes.	
2 3 4	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time	2 3 4	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet	
2 3 4 5	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the	2 3 4 5	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives	
2 3 4	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays?	2 3 4	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security	
2 3 4 5 6 7	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays? A. Because I didn't fully understand	2 3 4 5 6 7	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that	
2 3 4 5 6 7 8	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays? A. Because I didn't fully understand the transaction, we were I was never sure of	2 3 4 5 6	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that also consistent with your understanding of the	
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2 3 <mark>4 5 6 7 8 9 0 11 2 13 13 13 13 13 14 15 15 15 15 15 15 15 15 15 15 15 15 15 </mark>	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays? A. Because I didn't fully understand the transaction, we were I was never sure of anything in that transaction. Q. Would you agree that A. I was never sure. Q. Do you agree that that language is pretty clear, that means that all the repo	2 3 4 5 6 7 8 9 10 11 12 13	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that also consistent with your understanding of the transaction, that that was going over to Barclays as part of the sale transaction? A. Rephrase "understanding of the" say that again. Q. Is that consistent with your	
2 3 <mark>4 5 6 7 8 9 0 11 2 13 13 13 13 13 14 15 15 15 15 15 15 15 15 15 15 15 15 15 </mark>	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays? A. Because I didn't fully understand the transaction, we were I was never sure of anything in that transaction. Q. Would you agree that A. I was never sure. Q. Do you agree that that language is pretty clear, that means that all the repo collateral was going over to Barclays?	2 3 4 5 6 7 8 9 10 11 12 13 14	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that also consistent with your understanding of the transaction, that that was going over to Barclays as part of the sale transaction? A. Rephrase "understanding of the" say that again. Q. Is that consistent with your understanding of the sales transaction, that	
23456789 1011 1213 1415	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays? A. Because I didn't fully understand the transaction, we were I was never sure of anything in that transaction. Q. Would you agree that A. I was never sure. Q. Do you agree that that language is pretty clear, that means that all the repo collateral was going over to Barclays? MR. TAMBE: Objection to the form of	2 3 4 5 6 7 8 9 1 1 1 2 1 3 4 1 5	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that also consistent with your understanding of the transaction, that that was going over to Barclays as part of the sale transaction? A. Rephrase "understanding of the" say that again. Q. Is that consistent with your understanding of the sales transaction, that all exchange-traded derivative and any property	
2 3 <mark>4 5 6 7 8 9 0 11 2 13 13 13 13 13 14 15 15 15 15 15 15 15 15 15 15 15 15 15 </mark>	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays? A. Because I didn't fully understand the transaction, we were I was never sure of anything in that transaction. Q. Would you agree that I was never sure. Q. Do you agree that that language is pretty clear, that means that all the repo collateral was going over to Barclays? MR. TAMBE: Objection to the form of the question.	2 3 4 5 6 7 8 9 10 11 2 13 14 15 16	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that also consistent with your understanding of the transaction, that that was going over to Barclays as part of the sale transaction? A. Rephrase "understanding of the" say that again. Q. Is that consistent with your understanding of the sales transaction, that all exchange-traded derivative and any property that may be held to security obligations under	
23 <mark>4</mark> 56789011 121314 15677	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays? A. Because I didn't fully understand the transaction, we were I was never sure of anything in that transaction. Q. Would you agree that A. I was never sure. Q. Do you agree that that language is pretty clear, that means that all the repo collateral was going over to Barclays? MR. TAMBE: Objection to the form of the question. A. I can see those the words that	2 3 4 5 6 7 8 9 0 1 1 2 1 3 1 4 1 5 6 7 1 1 2 1 3 1 4 1 5 6 1 7	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that also consistent with your understanding of the transaction, that that was going over to Barclays as part of the sale transaction? A. Rephrase "understanding of the" say that again. Q. Is that consistent with your understanding of the sales transaction, that all exchange-traded derivative and any property that may be held to security obligations under such derivative was part of the purchased	
23 <mark>4</mark> 567890112 1121314 156718	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays? A. Because I didn't fully understand the transaction, we were I was never sure of anything in that transaction. Q. Would you agree that A. I was never sure. Q. Do you agree that that language is pretty clear, that means that all the repo collateral was going over to Barclays? MR. TAMBE: Objection to the form of the question. A. I can see those the words that say that, yes.	2345678901123145678	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that also consistent with your understanding of the transaction, that that was going over to Barclays as part of the sale transaction? A. Rephrase "understanding of the" say that again. Q. Is that consistent with your understanding of the sales transaction, that all exchange-traded derivative and any property that may be held to security obligations under such derivative was part of the purchased assets and was being transferred to Barclays as	
23 <mark>4</mark> 567890112314561789	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays? A. Because I didn't fully understand the transaction, we were I was never sure of anything in that transaction. Q. Would you agree that A. I was never sure. Q. Do you agree that that language is pretty clear, that means that all the repo collateral was going over to Barclays? MR. TAMBE: Objection to the form of the question. A. I can see those the words that say that, yes. Q. Okay. Going back to 2293, the	23456789011231456789	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that also consistent with your understanding of the transaction, that that was going over to Barclays as part of the sale transaction? A. Rephrase "understanding of the" say that again. Q. Is that consistent with your understanding of the sales transaction, that all exchange-traded derivative and any property that may be held to security obligations under such derivative was part of the purchased assets and was being transferred to Barclays as part of the sale transaction?	
23 <mark>456789011231456</mark> 7890	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays? A. Because I didn't fully understand the transaction, we were I was never sure of anything in that transaction. Q. Would you agree that A. I was never sure. Q. Do you agree that that language is pretty clear, that means that all the repo collateral was going over to Barclays? MR. TAMBE: Objection to the form of the question. A. I can see those the words that say that, yes. Q. Okay. Going back to 2293, the second bullet point, the last bullet point on	23456789011234567890	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that also consistent with your understanding of the transaction, that that was going over to Barclays as part of the sale transaction? A. Rephrase "understanding of the" say that again. Q. Is that consistent with your understanding of the sales transaction, that all exchange-traded derivative and any property that may be held to security obligations under such derivative was part of the purchased assets and was being transferred to Barclays as part of the sale transaction? A. That yes.	
23 <mark>4567890112</mark> 31456718901	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays? A. Because I didn't fully understand the transaction, we were I was never sure of anything in that transaction. Q. Would you agree that A. I was never sure. Q. Do you agree that that language is pretty clear, that means that all the repo collateral was going over to Barclays? MR. TAMBE: Objection to the form of the question. A. I can see those the words that say that, yes. Q. Okay. Going back to 2293, the second bullet point, the last bullet point on the page, says: "The securities and other	23456789011234567890 21212134567189021	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that also consistent with your understanding of the transaction, that that was going over to Barclays as part of the sale transaction? A. Rephrase "understanding of the" say that again. Q. Is that consistent with your understanding of the sales transaction, that all exchange-traded derivative and any property that may be held to security obligations under such derivative was part of the purchased assets and was being transferred to Barclays as part of the sale transaction? A. That yes. Q. And the parenthetical there where it	
23 <mark>456789</mark> 0112314567890122	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays? A. Because I didn't fully understand the transaction, we were I was never sure of anything in that transaction. Q. Would you agree that A. I was never sure. Q. Do you agree that that language is pretty clear, that means that all the repo collateral was going over to Barclays? MR. TAMBE: Objection to the form of the question. A. I can see those the words that say that, yes. Q. Okay. Going back to 2293, the second bullet point, the last bullet point on the page, says: "The securities and other assets held in LBI's clearance boxes as of the	23456789011234567890122 2122	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that also consistent with your understanding of the transaction, that that was going over to Barclays as part of the sale transaction? A. Rephrase "understanding of the" say that again. Q. Is that consistent with your understanding of the sales transaction, that all exchange-traded derivative and any property that may be held to security obligations under such derivative was part of the purchased assets and was being transferred to Barclays as part of the sale transaction? A. That yes. Q. And the parenthetical there where it refers to "and any property that may be held to	
23 <mark>456789011</mark> 2314 1567890112314 15678901223	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays? A. Because I didn't fully understand the transaction, we were I was never sure of anything in that transaction. Q. Would you agree that A. I was never sure. Q. Do you agree that that language is pretty clear, that means that all the repo collateral was going over to Barclays? MR. TAMBE: Objection to the form of the question. A. I can see those the words that say that, yes. Q. Okay. Going back to 2293, the second bullet point, the last bullet point on the page, says: "The securities and other assets held in LBI's clearance boxes as of the time of closing." Do you see that?	2345678901123415678901223	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that also consistent with your understanding of the transaction, that that was going over to Barclays as part of the sale transaction? A. Rephrase "understanding of the" say that again. Q. Is that consistent with your understanding of the sales transaction, that all exchange-traded derivative and any property that may be held to security obligations under such derivative was part of the purchased assets and was being transferred to Barclays as part of the sale transaction? A. That yes. Q. And the parenthetical there where it refers to "and any property that may be held to security obligations under such derivative," do	
23 <mark>456789</mark> 012314567890122	Fogarty - Highly Confidential since April, prior to April of this year, so I just don't recall all the details. Q. I appreciate that, but at any time did you have some belief that not all the collateral was going over to Barclays? A. Because I didn't fully understand the transaction, we were I was never sure of anything in that transaction. Q. Would you agree that A. I was never sure. Q. Do you agree that that language is pretty clear, that means that all the repo collateral was going over to Barclays? MR. TAMBE: Objection to the form of the question. A. I can see those the words that say that, yes. Q. Okay. Going back to 2293, the second bullet point, the last bullet point on the page, says: "The securities and other assets held in LBI's clearance boxes as of the time of closing." Do you see that? A. Yes.	23456789011234567890122 2122	Fogarty - Highly Confidential understanding of the Barclays sale transaction? A. Yes. Q. Turning the page, the first bullet point says: "All exchange-traded derivatives and any property that may be held to security obligations under such derivative," is that also consistent with your understanding of the transaction, that that was going over to Barclays as part of the sale transaction? A. Rephrase "understanding of the" say that again. Q. Is that consistent with your understanding of the sales transaction, that all exchange-traded derivative and any property that may be held to security obligations under such derivative was part of the purchased assets and was being transferred to Barclays as part of the sale transaction? A. That yes. Q. And the parenthetical there where it refers to "and any property that may be held to	

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	Page 50		Page 51
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	derivatives?	2	as property.
3	MR. TAMBE: Object to the form of	3	Q. It reads as any property that may be
4	the question.	4	held to security obligations under such
5	A. I don't understand this piece.	5	derivative.
2			
6	Q. Do you recall asking Weil at any	6	My question to you is do you believe
/	point to clarify it?	7	that that's referring to collateral?
8	A. I don't.	8	MR. TAMBE: Objection.
9	Q. Do you know if you had an	9	A. Property held for security
10	understanding of that at the time?	10	obligations and collateral presumably are the
11	A. I don't recall focusing on the	11	same thing.
12	exchange-traded derivatives.	12	Q. And when it says "any property,"
13	Q. And just to be clear, it's your	13	assuming it's referring to collateral, that
14	testimony that you are not sure if the	14	would include both securities and cash;
15	parenthetical, "and any property that may be	15	correct?
16	held to security obligations under such	16	MR. TAMBE: Objection to the form of
17	derivative," is referring to collateral or not?	17	the question.
18	A. I don't	18	A. I don't know.
19	MR. TAMBE: Object to the form of	19	Q. How do you read that, assuming
20	the question.	20	that's referring to collateral when it says
01	You can answer.	21	"any property," would you interpret "any
22	A. I don't understand what that means.	22	property" to include things like security and
23			cash?
	Q. Do you believe it to be referring to	23	
24 25	collateral?	24 25	MR. TAMBE: Object to the form of
<u> </u>	A. Property I read it to it reads	23	the question.
Г	Page 52		Page 53
1		1	
1 2	Fogarty - Highly Confidential	1_	Fogarty - Highly Confidential
2	Fogarty - Highly Confidential A. Yes.	1 2	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended
2	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on	1 2 3	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature
2 3 4	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to	1 2 3 4	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there?
2 3 4 5	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning	1 2 3 4 5	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that.
2 3 4	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning the document they sent you?	1 2 3 4	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that. Q. Is that also consistent with your
2 3 4 5 6 7	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning the document they sent you? A. I recall attempting to summarize the	1 2 3 4 5 6 7	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that. Q. Is that also consistent with your understanding of the deal, that the securities,
2 3 4 5 6 7 8	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning the document they sent you? A. I recall attempting to summarize the transaction not the transaction. To	1 2 3 4 5 6 7 8	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that. Q. Is that also consistent with your understanding of the deal, that the securities, that value, was going over to Barclays as part
2 3 4 5 6 7 8 9	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning the document they sent you? A. I recall attempting to summarize the transaction not the transaction. To summarize what was what was well,	1 2 3 4 5 6 7 8	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that. Q. Is that also consistent with your understanding of the deal, that the securities, that value, was going over to Barclays as part of the sale transaction?
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2 3 4 5 6 7 8 9 10	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning the document they sent you? A. I recall attempting to summarize the transaction not the transaction. To summarize what was what was well, summarize the transaction and to summarize what was left for the estate to manage as the	1 2 3 4 5 6 7 8 9	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that. Q. Is that also consistent with your understanding of the deal, that the securities, that value, was going over to Barclays as part of the sale transaction? MR. TAMBE: Object to the form of the question.
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2 3 4 5 6 7 8 9 10 11 12 13	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning the document they sent you? A. I recall attempting to summarize the transaction not the transaction. To summarize what was what was well, summarize the transaction and to summarize what was left for the estate to manage as the outgrowth of all of this effort. Q. Was Weil cooperative with Alvarez in providing information to Alvarez?	1 2 3 4 5 6 7 8 9 10 11 12 13 14	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that. Q. Is that also consistent with your understanding of the deal, that the securities, that value, was going over to Barclays as part of the sale transaction? MR. TAMBE: Object to the form of the question. A. I don't recall this particular piece of the this particular 769 piece of the transaction.
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2 3 4 5 6 7 8 9 0 11 12 14 15 16	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning the document they sent you? A. I recall attempting to summarize the transaction not the transaction. To summarize what was what was well, summarize the transaction and to summarize what was left for the estate to manage as the outgrowth of all of this effort. Q. Was Weil cooperative with Alvarez in providing information to Alvarez? A. Yes. Q. If you would look at 2295, please.	1 2 3 4 5 6 7 8 9 10 11 2 13 14 15 16	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that. Q. Is that also consistent with your understanding of the deal, that the securities, that value, was going over to Barclays as part of the sale transaction? MR. TAMBE: Object to the form of the question. A. I don't recall this particular piece of the this particular 769 piece of the transaction. Q. Okay. You don't recall one way or the other?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning the document they sent you? A. I recall attempting to summarize the transaction not the transaction. To summarize what was what was well, summarize the transaction and to summarize what was left for the estate to manage as the outgrowth of all of this effort. Q. Was Weil cooperative with Alvarez in providing information to Alvarez? A. Yes. Q. If you would look at 2295, please. The top of the page well, strike that.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that. Q. Is that also consistent with your understanding of the deal, that the securities, that value, was going over to Barclays as part of the sale transaction? MR. TAMBE: Object to the form of the question. A. I don't recall this particular piece of the this particular 769 piece of the transaction. Q. Okay. You don't recall one way or the other? A. I don't.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 19 19 19 19 19 19 19 19 19	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning the document they sent you? A. I recall attempting to summarize the transaction not the transaction. To summarize what was what was well, summarize the transaction and to summarize what was left for the estate to manage as the outgrowth of all of this effort. Q. Was Weil cooperative with Alvarez in providing information to Alvarez? A. Yes. Q. If you would look at 2295, please. The top of the page well, strike that.	1 2 3 4 5 6 7 8 9 0 11 12 13 14 15 16 7	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that. Q. Is that also consistent with your understanding of the deal, that the securities, that value, was going over to Barclays as part of the sale transaction? MR. TAMBE: Object to the form of the question. A. I don't recall this particular piece of the this particular 769 piece of the transaction. Q. Okay. You don't recall one way or the other? A. I don't.
2 3 4 5 6 7 8 9 0 11 12 13 14 15 16 17 18 19 20	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning the document they sent you? A. I recall attempting to summarize the transaction not the transaction. To summarize what was what was well, summarize the transaction and to summarize what was left for the estate to manage as the outgrowth of all of this effort. Q. Was Weil cooperative with Alvarez in providing information to Alvarez? A. Yes. Q. If you would look at 2295, please. The top of the page well, strike that. Let's go ahead and go to 2296,	1 2 3 4 5 6 7 8 9 0 1 1 2 1 3 4 1 5 6 7 8 9 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that. Q. Is that also consistent with your understanding of the deal, that the securities, that value, was going over to Barclays as part of the sale transaction? MR. TAMBE: Object to the form of the question. A. I don't recall this particular piece of the this particular 769 piece of the transaction. Q. Okay. You don't recall one way or the other? A. I don't. Q. Did you subsequently come to learn
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2 3 4 5 6 7 8 9 0 1 1 1 2 1 1 1 1 1 1 2 1 1 2 1 1 2 1 1 1 2 2 1 2 1 2 2 2 2 2 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning the document they sent you? A. I recall attempting to summarize the transaction not the transaction. To summarize what was what was well, summarize the transaction and to summarize what was left for the estate to manage as the outgrowth of all of this effort. Q. Was Weil cooperative with Alvarez in providing information to Alvarez? A. Yes. Q. If you would look at 2295, please. The top of the page well, strike that. Let's go ahead and go to 2296, please. And do you see where it says at the top of the page: "Purchaser shall receive" and then the second point says: "To the extent	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 19 19 19 19 19 19 19 19 19 19 19 19	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that. Q. Is that also consistent with your understanding of the deal, that the securities, that value, was going over to Barclays as part of the sale transaction? MR. TAMBE: Object to the form of the question. A. I don't recall this particular piece of the this particular 769 piece of the transaction. Q. Okay. You don't recall one way or the other? A. I don't. Q. Did you subsequently come to learn at some point in time strike that. Do you recall learning at some point
2 3 4 5 6 7 8 9 10 11 12 13 14 14 15 16 17 18 19 20 21 22 22 22 23 24 25 26 26 27 27 28 28 29 29 29 29 29 29 29 29 29 29	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning the document they sent you? A. I recall attempting to summarize the transaction not the transaction. To summarize what was what was well, summarize the transaction and to summarize what was left for the estate to manage as the outgrowth of all of this effort. Q. Was Weil cooperative with Alvarez in providing information to Alvarez? A. Yes. Q. If you would look at 2295, please. The top of the page well, strike that. Let's go ahead and go to 2296, please. And do you see where it says at the top of the page: "Purchaser shall receive" and then the second point says: "To the extent permitted by applicable law and as soon as	1 2 3 4 5 6 7 8 9 0 1 1 2 1 3 4 1 5 6 7 8 9 0 1 2 1 2 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that. Q. Is that also consistent with your understanding of the deal, that the securities, that value, was going over to Barclays as part of the sale transaction? MR. TAMBE: Object to the form of the question. A. I don't recall this particular piece of the this particular 769 piece of the transaction. Q. Okay. You don't recall one way or the other? A. I don't. Q. Did you subsequently come to learn at some point in time strike that. Do you recall learning at some point in time that this was listed as a purchased asset in the sale transaction documents?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning the document they sent you? A. I recall attempting to summarize the transaction not the transaction. To summarize what was what was well, summarize the transaction and to summarize what was left for the estate to manage as the outgrowth of all of this effort. Q. Was Weil cooperative with Alvarez in providing information to Alvarez? A. Yes. Q. If you would look at 2295, please. The top of the page well, strike that. Let's go ahead and go to 2296, please. And do you see where it says at the top of the page: "Purchaser shall receive" and then the second point says: "To the extent permitted by applicable law and as soon as practicable after the closing 769 million of	1 2 3 4 5 6 7 8 9 0 1 1 1 2 1 3 1 4 1 5 1 6 1 2 1 2 2 2 3 2 3 2 3 2 3 2 3 2 3 2 3 2	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that. Q. Is that also consistent with your understanding of the deal, that the securities, that value, was going over to Barclays as part of the sale transaction? MR. TAMBE: Object to the form of the question. A. I don't recall this particular piece of the this particular 769 piece of the transaction. Q. Okay. You don't recall one way or the other? A. I don't. Q. Did you subsequently come to learn at some point in time strike that. Do you recall learning at some point in time that this was listed as a purchased asset in the sale transaction documents? A. I recall something we termed the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 22	Fogarty - Highly Confidential A. Yes. Q. When you received this from Weil on September 27th, do you recall going back to Weil with any follow-up questions concerning the document they sent you? A. I recall attempting to summarize the transaction not the transaction. To summarize what was what was well, summarize the transaction and to summarize what was left for the estate to manage as the outgrowth of all of this effort. Q. Was Weil cooperative with Alvarez in providing information to Alvarez? A. Yes. Q. If you would look at 2295, please. The top of the page well, strike that. Let's go ahead and go to 2296, please. And do you see where it says at the top of the page: "Purchaser shall receive" and then the second point says: "To the extent permitted by applicable law and as soon as	1 2 3 4 5 6 7 8 9 0 1 1 2 1 3 4 1 5 6 7 8 9 0 1 2 1 2 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential Securities and Exchange Act of 1934 as amended or securities of substantially the same nature and value," do you see that written there? A. I see that. Q. Is that also consistent with your understanding of the deal, that the securities, that value, was going over to Barclays as part of the sale transaction? MR. TAMBE: Object to the form of the question. A. I don't recall this particular piece of the this particular 769 piece of the transaction. Q. Okay. You don't recall one way or the other? A. I don't. Q. Did you subsequently come to learn at some point in time strike that. Do you recall learning at some point in time that this was listed as a purchased asset in the sale transaction documents?

	Pg 150	וט ל	194
	Page 54		Page 55
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	Q. Do you have an understanding that	2	Weil among potentially others?
3	the unencumbered box referred to the clearance	3	• • •
		1	A. I do.
4	boxes?	4	Q. And do you see this at the top says
5	A. Yes.	5	"9/29 MTG" for meeting?
6	Q. Does that help you recall that the	6	A. I see that.
7	clearance box is something separate than the	7	Q. And do you see Alex, Rod Miller,
8	15C3 assets?	8	Paolo?
9	MR. TAMBE: Object to the form of	9	A. I do.
10	the question.	10	Q. Do you know whose handwriting this
11	A. The way we were, again, attempting	11	is?
12	to understand the transaction, there were those	12	A. I do not. I don't know.
	two pieces.	13	Q. It's not yours?
13 14	MR. THOMAS: Let me show you a	14	A. It's not my handwriting, no.
15	document that we will mark as 563-B.	15	Q. Do you recall having a meeting with
16	(Exhibit 563-B, handwritten notes,	16	Alex Kirk, Paolo Tonucci and Rod Miller at
17		17	about this time?
18		18	
18 19	marked for identification.)		A. I recall meeting with Alex Kirk and
	(Document review.)	19	Paolo. I can't recall I can't recall Rod
20	Q. Do you recognize this document?	20	whether Rod was there or not, and I recall a
21	A. No.	21	bigger others in the room as well. I can't
22	Q. Do you recall there being discussion	22	recall.
23	in the other e-mails that we looked at about	23	Q. And who else do you recall being
24	you getting together a meeting or discussion	24	there?
25	with Alex Kirk, Paolo Tonucci, Rod Miller at	25	A. Bill Gordon. I believe David Coles.
	Page 56		Page 57
	Page 56	1	Page 57
1	Page 56 Fogarty - Highly Confidential	1 2	Page 57 Fogarty - Highly Confidential
1 2	Page 56 Fogarty - Highly Confidential And I can't recall beyond there are others	2	Page 57 Fogarty - Highly Confidential MS. DelMEDICO: I can't. I can try
1 2 3	Fogarty - Highly Confidential And I can't recall beyond there are others that might have been there, but I can't recall.	2 3	Page 57 Fogarty - Highly Confidential MS. DelMEDICO: I can't. I can try to find out for you.
1 2 3 4	Fogarty - Highly Confidential And I can't recall beyond there are others that might have been there, but I can't recall. Q. And anyone else from Weil? Was Bob	2 3 4	Fogarty - Highly Confidential MS. DelMEDICO: I can't. I can try to find out for you. MR. THOMAS: Okay.
1 2 3 4 5	Fogarty - Highly Confidential And I can't recall beyond there are others that might have been there, but I can't recall. Q. And anyone else from Weil? Was Bob Messineo there?	2 3 4 5	Fogarty - Highly Confidential MS. DelMEDICO: I can't. I can try to find out for you. MR. THOMAS: Okay. Q. Do you remember that meeting? Where
1 2 3 4	Fogarty - Highly Confidential And I can't recall beyond there are others that might have been there, but I can't recall. Q. And anyone else from Weil? Was Bob Messineo there? A. I don't recall Bob.	2 3 4	Fogarty - Highly Confidential MS. DelMEDICO: I can't. I can try to find out for you. MR. THOMAS: Okay. Q. Do you remember that meeting? Where was that meeting held?
1 2 3 4 5 6 7	Fogarty - Highly Confidential And I can't recall beyond there are others that might have been there, but I can't recall. Q. And anyone else from Weil? Was Bob Messineo there? A. I don't recall Bob. Q. How about Lori Fife?	2 3 4 5 6 7	Fogarty - Highly Confidential MS. DelMEDICO: I can't. I can try to find out for you. MR. THOMAS: Okay. Q. Do you remember that meeting? Where was that meeting held? A. I think the Lehman offices, the old
1 2 3 4 5 6 7 8	Fogarty - Highly Confidential And I can't recall beyond there are others that might have been there, but I can't recall. Q. And anyone else from Weil? Was Bob Messineo there? A. I don't recall Bob. Q. How about Lori Fife? A. I don't recall her being there	2 3 4 5 6 7 8	Fogarty - Highly Confidential MS. DelMEDICO: I can't. I can try to find out for you. MR. THOMAS: Okay. Q. Do you remember that meeting? Where was that meeting held? A. I think the Lehman offices, the old Lehman offices, but it could be we were in
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	Page 58		Page 59
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	accomplish the task.	2	along the way. My understanding of things kept
3	Q. In what sense did you not accomplish	3	changing along the way.
4	the task?	4	Q. Did you feel there was some
	A. We left the room somewhat more	5	ambiguity in the language of the purchase
56	befuddled than when we entered the room.	6	agreement which you reviewed?
7	Q. And what befuddled you?	7	A. I didn't study it from that
8	A. We still didn't understand the	8	
9		9	standpoint. There was ambiguity in my
9	transaction clearly at that time.	10	understanding of what happened. I could never
10	Q. Did there come a point in time when		quite and I am pretty usually pretty good
11 12	you understood the transaction clearly?	11 12	at this stuff. I could never quite put it all
12	A. No.		together as to what because I wasn't there
13	Q. Still even today you don't	13	and that's where it was.
14 15	understand the transaction?	14	Q. What aspect of the deal could you
15	A. I haven't tried to in a long time.	15	not put together?
16	Q. When did you leave Alvarez?	16	A. The interrelations of all the
17	A. Beginning of April, late March.	17	different just the actual math the
18	Q. And at that time you still didn't	18	ultimate mathematics of the transaction I
19	understand the transaction?	19	couldn't put together ultimately.
20	A. Correct.	20	Q. Did you ever identify any term of
21	Q. What do you mean when you say you	21	the purchase agreement that you thought was
22	didn't understand the transaction?	22	vague or unclear?
23 24	A. I didn't there were lots of	23	MR. TAMBE: Objection. Asked and
24	moving parts and I don't I never could put	24	answered. Objection to the form of the
25	them all together, because things kept changing	25	question.
	Page 60		Page 61
			rage or
1 1			
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	A. I couldn't ever understand exactly	2	mentioned the two pieces of the transaction.
2 3	A. I couldn't ever understand exactly how the transaction ultimately came together	2 3	mentioned the two pieces of the transaction. Put the unencumbered asset piece. The other
2 3	A. I couldn't ever understand exactly how the transaction ultimately came together and closed.	2 3 4	mentioned the two pieces of the transaction. Put the unencumbered asset piece. The other piece, and I am recalling there being a haircut
2 3	A. I couldn't ever understand exactly how the transaction ultimately came together and closed. Q. Well, I am asking a little bit	2 3 4 5	mentioned the two pieces of the transaction. Put the unencumbered asset piece. The other piece, and I am recalling there being a haircut that was taken against again, I'm not a
23456	A. I couldn't ever understand exactly how the transaction ultimately came together and closed. Q. Well, I am asking a little bit different question, I think.	2 3 4 5 6	mentioned the two pieces of the transaction. Put the unencumbered asset piece. The other piece, and I am recalling there being a haircut that was taken against again, I'm not a valuation person. I am trying to just follow
2 3 4 5 6 7	A. I couldn't ever understand exactly how the transaction ultimately came together and closed. Q. Well, I am asking a little bit	2 3 4 5	mentioned the two pieces of the transaction. Put the unencumbered asset piece. The other piece, and I am recalling there being a haircut that was taken against again, I'm not a
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2 3 4 5 6 7	A. I couldn't ever understand exactly how the transaction ultimately came together and closed. Q. Well, I am asking a little bit different question, I think. Could you understand the transaction	2 3 4 5 6 7	mentioned the two pieces of the transaction. Put the unencumbered asset piece. The other piece, and I am recalling there being a haircut that was taken against again, I'm not a valuation person. I am trying to just follow what happened in terms of control asset
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234567890112345678901223	A. I couldn't ever understand exactly how the transaction ultimately came together and closed. Q. Well, I am asking a little bit different question, I think. Could you understand the transaction as spelled out in the purchase agreement in terms of what assets were supposed to be included in the purchased assets and which weren't? A. I would come to a I will call it a draft understanding of the transaction and find something out different and it continued to evolve and I couldn't the tasks that Brian asked me to pursue, I could never get enough cooperation from the other side through my teams, and this wasn't all just me trying to through my teams to really understand the transaction. Q. Has there been any asset or bucket of assets or type of assets that you had difficulty understanding were conveyed or not	23456789011234567890 11234567890 2223	mentioned the two pieces of the transaction. Put the unencumbered asset piece. The other piece, and I am recalling there being a haircut that was taken against again, I'm not a valuation person. I am trying to just follow what happened in terms of control asset control, and there was a haircut taken in the transaction that I never quite understood and there was liabilities that others on the team, David Coles' team, were trying to understand that were being assumed by Barclays that we could never get good detail and understand. Q. Anything else you can think of not having clarity on? A. Then there were other things like the stadium tickets and the who got to sell Lehman's, you know, caps and bags. Just this kind of stuff. There was lots of this kind of stuff that we never had great clarity on. Q. Anything that you would consider material? MR. TAMBE: Objection to the form of
23456789011231456789012 2222	A. I couldn't ever understand exactly how the transaction ultimately came together and closed. Q. Well, I am asking a little bit different question, I think. Could you understand the transaction as spelled out in the purchase agreement in terms of what assets were supposed to be included in the purchased assets and which weren't? A. I would come to a I will call it a draft understanding of the transaction and find something out different and it continued to evolve and I couldn't the tasks that Brian asked me to pursue, I could never get enough cooperation from the other side through my teams, and this wasn't all just me trying to through my teams to really understand the transaction. Q. Has there been any asset or bucket of assets or type of assets that you had	23456789011234567890122	mentioned the two pieces of the transaction. Put the unencumbered asset piece. The other piece, and I am recalling there being a haircut that was taken against again, I'm not a valuation person. I am trying to just follow what happened in terms of control asset control, and there was a haircut taken in the transaction that I never quite understood and there was liabilities that others on the team, David Coles' team, were trying to understand that were being assumed by Barclays that we could never get good detail and understand. Q. Anything else you can think of not having clarity on? A. Then there were other things like the stadium tickets and the who got to sell Lehman's, you know, caps and bags. Just this kind of stuff. There was lots of this kind of stuff that we never had great clarity on. Q. Anything that you would consider material?

	Pg 15	- 01	-
	Page 62		Page 63
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	were more material than the latter piece that I	2	people I mentioned earlier. I can't tell you
3	mentioned.		for sure that this is that same meeting.
4	Q. Did you consider the stadium seats	3	Q. Is there any doubt in your mind that
		1 /	
5	or anything else material to the transaction?	5	you were at this meeting that the notes are
6	A. No.	6	referring to?
7	MR. TAMBE: Now is a good time for a	7	MR. TAMBE: Object to the form of
8	break, Tom.	8	the question.
9	MR. THOMAS: Okay. Let me finish up	9	A. There actually is some doubt,
10	with the current document.	10	because there may have been other meetings that
11	MR. TAMBE: That's fine.	11	I wasn't at with either Paolo or Alex, so I
12	Q. Are you okay to finish up with this	12	can't for sure know that this is the same one,
13	document?	13	the same meeting.
14	A. Sure.	14	Q. Okay.
15	Q. Let me ask you to turn to page 4889	15	A. I assume it is, but I don't know for
16	of Exhibit 563-B, and I understand these are	16	sure.
17	not your notes and obviously we are going to	17	Q. You assume so because it's obviously
18	depose whoever it is who wrote the notes as	18	a detailed discussion of the deal on September
19	soon as we are told that information, but this	19	29th shortly after you were tasked to meet with
20	is notes of a meeting that you were at and	20	these people and find out all you can about the
21	participated in; correct?	21	actual final deal; correct?
22	MR. TAMBE: Objection to the form of	22	MR. TAMBE: Object to the form.
23	the question. I don't think you have ever	23	A. I assume so, because it's in the
24	established that.	24	same week that I probably had that same
25	A. I do I was at a meeting with the	25	meeting.
	The Twas at a mooting with the		
	Daga 61		Dago 65
	Page 64		Page 65
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
1 2	Fogarty - Highly Confidential Q. Do you think there might have been	1 2	Fogarty - Highly Confidential (Document review.)
1 2 3	Fogarty - Highly Confidential Q. Do you think there might have been other people at Alvarez secretly meeting with	3	Fogarty - Highly Confidential (Document review.) A. I can't I can't read all the
4	Fogarty - Highly Confidential Q. Do you think there might have been other people at Alvarez secretly meeting with Paolo and Alex discussing the deals that you	3 4	Fogarty - Highly Confidential (Document review.) A. I can't I can't read all the handwriting, but
4 5	Fogarty - Highly Confidential Q. Do you think there might have been other people at Alvarez secretly meeting with Paolo and Alex discussing the deals that you didn't know about?	3 4 5	Fogarty - Highly Confidential (Document review.) A. I can't I can't read all the handwriting, but (Document review.)
4	Fogarty - Highly Confidential Q. Do you think there might have been other people at Alvarez secretly meeting with Paolo and Alex discussing the deals that you didn't know about? A. I don't know for sure. I know	3 4	Fogarty - Highly Confidential (Document review.) A. I can't I can't read all the handwriting, but (Document review.) A. Okay.
4 5 6 7	Fogarty - Highly Confidential Q. Do you think there might have been other people at Alvarez secretly meeting with Paolo and Alex discussing the deals that you didn't know about?	3 4 5	Fogarty - Highly Confidential (Document review.) A. I can't I can't read all the handwriting, but (Document review.)
4 5 6 7 8	Fogarty - Highly Confidential Q. Do you think there might have been other people at Alvarez secretly meeting with Paolo and Alex discussing the deals that you didn't know about? A. I don't know for sure. I know	3 4 5	Fogarty - Highly Confidential (Document review.) A. I can't I can't read all the handwriting, but (Document review.) A. Okay.
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4 5 6 7 8 9	Fogarty - Highly Confidential Q. Do you think there might have been other people at Alvarez secretly meeting with Paolo and Alex discussing the deals that you didn't know about? A. I don't know for sure. I know that well, there were others on the Alvarez team that were trying to help understand this,	3 4 5 6 7 8	Fogarty - Highly Confidential (Document review.) A. I can't I can't read all the handwriting, but (Document review.) A. Okay. Q. And having looked at the substance of what the notes are referring to, does this
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	Page 66		Page 67
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	Mr. Tonucci and Mr. Kirk whether they gave you	2	of 4889?
3	a description of what happened with the we will	3	A. Yes.
4	refer to it as the \$7 billion that did not go	4	Q. Do you have an understanding of what
5	to Barclays that was supposed to?	5	that chart is showing?
6	MR. TAMBE: Objection to the form of	6	MR. TAMBE: Object to the form of
7	the question.	7	the question.
8	A. I recall trying to piece the	8	A. In a general sense, yes.
9	transaction together. That's what I recall.	9	Q. Can you explain what it's showing in
10	Q. Do you recall there being an issue	10	a general sense, please.
11	with Barclays having sent over \$45 million in	11	A. I understand it to be generally
12	cash and having not gotten all the assets in	12	trying to follow the transaction.
13	return that it was supposed to get?	13	Q. And do you see the box where it says
14	A. I recall there was an issue between	14	kept 8.6 something cash, 8.6 billion cash?
15 16	JPMorgan, Barclays and Lehman.	15	A. Uh-huh.
16	Q. And you recall it generally	16	Q. Do you know what that's referring
17	involving the fact that Barclays had put out	17	to?
18	\$45 billion in cash and not gotten all the	18	A. I do not, other than it says "held
19	securities that it was supposed to have gotten?	19	back from Fed" next to it.
20	A. Yes.	20	Q. Turning down a couple of lines it
21	Q. And do you recall Mr. Kirk or	21	says "Sunday Barclays talked to JPM, resolve
22	Mr. Tonucci explaining to you in this meeting	22	\$7 billion cash." Do you see that?
23	what happened?	23	A. I see that.
24	A. Yes.	24	Q. The next line it says "8.4 billion
25	O Okov Do vou coo a chart at the top		as symiting resortly lead to an arrest " Do rear son
Ĕ	Q. Okay. Do you see a chart at the top	25	securities worth half amount." Do you see
	Page 68	25	Page 69
	Page 68	1	Page 69
		1 2	Page 69 Fogarty - Highly Confidential
1 2	Page 68 Fogarty - Highly Confidential	1	Fogarty - Highly Confidential the question.
1 2 3	Page 68 Fogarty - Highly Confidential that? A. I see that.	1 2	Fogarty - Highly Confidential the question. A. There was a dispute on what that
1 2 3 4	Page 68 Fogarty - Highly Confidential that? A. I see that.	1 2 3	Fogarty - Highly Confidential the question.
1 2 3	Fogarty - Highly Confidential that? A. I see that. Q. Do you recall in this meeting you attended a discussion about the securities	1 2 3 4	Fogarty - Highly Confidential the question. A. There was a dispute on what that was on what the 50 billion was worth, yes. I recall that.
1 2 3 4 5	Page 68 Fogarty - Highly Confidential that? A. I see that. Q. Do you recall in this meeting you	1 2 3 4 5	Fogarty - Highly Confidential the question. A. There was a dispute on what that was on what the 50 billion was worth, yes.
1 2 3 4 5	Page 68 Fogarty - Highly Confidential that? A. I see that. Q. Do you recall in this meeting you attended a discussion about the securities being only worth half of what they were marked	1 2 3 4 5	Fogarty - Highly Confidential the question. A. There was a dispute on what that was on what the 50 billion was worth, yes. I recall that. Q. And you understood that Barclays did
1 2 3 4 5 6 7	Page 68 Fogarty - Highly Confidential that? A. I see that. Q. Do you recall in this meeting you attended a discussion about the securities being only worth half of what they were marked at?	1 2 3 4 5 6	Fogarty - Highly Confidential the question. A. There was a dispute on what that was on what the 50 billion was worth, yes. I recall that. Q. And you understood that Barclays did not believe it was worth 50 billion, but
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1 <mark>234</mark> 567890 11234567890 11234567890 2122	Fogarty - Highly Confidential that? A. I see that. Q. Do you recall in this meeting you attended a discussion about the securities being only worth half of what they were marked at? MR. TAMBE: Objection to the form of the question. A. I do not. Q. Do you recall generally in this part of this discussion that some of the securities that were associated with the repo collateral were not, in fact, worth what they were marked at? A. I recall the \$45 billion number having been thought to be \$50 billion worth of value and there was a description of a I don't recall if it was in this meeting. A description of a fight about whether it was worth 50 billion or 45 billion. Q. There was a question discussed as to	1 2 3 4 5 6 7 8 9 0 1 1 2 1 3 4 1 5 6 7 8 9 0 1 2 2 2 2 2 2 2	Fogarty - Highly Confidential the question. A. There was a dispute on what that was on what the 50 billion was worth, yes. I recall that. Q. And you understood that Barclays did not believe it was worth 50 billion, but believed it was worth roughly in the neighborhood of about \$5 billion less than that? MR. TAMBE: Objection to the form of the question. A. I do not know what Barclays believed it was worth. I don't know. Q. Do you know then what was the disagreement about in terms of was there any disagreement in terms of the valuation of those securities? A. I wasn't there, so I don't know specifically, but I know it was described as there was a fight about there was a fight where the management team was believed the
1 <mark>234</mark> 567890 11234567890 11234567890 122223	Fogarty - Highly Confidential that? A. I see that. Q. Do you recall in this meeting you attended a discussion about the securities being only worth half of what they were marked at? MR. TAMBE: Objection to the form of the question. A. I do not. Q. Do you recall generally in this part of this discussion that some of the securities that were associated with the repo collateral were not, in fact, worth what they were marked at? A. I recall the \$45 billion number having been thought to be \$50 billion worth of value and there was a description of a I don't recall if it was in this meeting. A description of a fight about whether it was worth 50 billion or 45 billion. Q. There was a question discussed as to whether it was really worth the amount that it	123456 <mark>7890112314</mark> 15678901223	Fogarty - Highly Confidential the question. A. There was a dispute on what that was on what the 50 billion was worth, yes. I recall that. Q. And you understood that Barclays did not believe it was worth 50 billion, but believed it was worth roughly in the neighborhood of about \$5 billion less than that? MR. TAMBE: Objection to the form of the question. A. I do not know what Barclays believed it was worth. I don't know. Q. Do you know then what was the disagreement about in terms of was there any disagreement in terms of the valuation of those securities? A. I wasn't there, so I don't know specifically, but I know it was described as there was a fight about there was a fight where the management team was believed the securities that the management team was I
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	Page 70		Page 71
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	and Barclays was at 45 and the Lehman folks,	2	MR. TAMBE: Objection to the form of
3	Alex and Paolo, were at they were at 50 and	3	the question.
4	there was a fight about it. That's what I		A. No.
5	recall.	<mark>4</mark> 5	Q. If you would turn the page to 4890.
6	Q. Are you sure Alex and Paolo were at	6	About three-quarters of the way down there
7	50 or was it the case that those were the	7	appears to be a reference to "paid 38" I am
8	marks?	8	* *
9			going to say billion "in cash to buy 42.9B
10	MR. TAMBE: Object to the form of	9 10	Lehman asset" and it says "different"
	the question.		appears to say "different valuation." Is that
11	A. I don't recall where Alex and Paolo	11	how you read that?
12 13	would have been at. I don't know where they	12 13	MR. TAMBE: Object to the form of
1 3	were what they I remember there being a		the question.
14	\$50 billion number, though.	14	Q. Then underneath it says "5.1"?
15	THE VIDEOGRAPHER: The time is	15	A. I see that. "Different" yeah, I
16	11:06. We are going off the record.	16	don't know what that word is, but it could be
17	(Recess was taken from 11:06 to	17	valuation.
18	11:06.)	18	Q. The last word is "valuation"; right?
19	THE VIDEOGRAPHER: The time is	19	"5.1."
20	11:06. We are back on the record.	20	MR. TAMBE: Object to the form.
21	BY MR. THOMAS:	21	Q. Does that sound like the difference
22	Q. Do you recall anyone from Lehman	22	in valuation that you were discussing allowing
23	ever expressing a belief as to what they	23	for the fact that there were \$7 billion that
24	believe the actual value of those securities	24	didn't get transferred?
25	was?	25	MR. TAMBE: Objection to the form of
	Page 72		Page 73
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	the question.	2	MR. TAMBE: Well, what the rules
3	A. I see two numbers. I see 42.9 and I	3	also require is that you have a fair
4	see 38, which are different to the tune of 4.9,	4	examination. He has already told you this
5	and I don't know what the 5.1 is.	5	is not his handwriting. You are asking him
6	Q. And if you take the 48 take the	6	to do math based on numbers you are reading
7	38 cash and add 7, you get the 45 billion that	7	on a piece of paper.
8	Barclays paid in cash; right?	8	MR. THOMAS: You are arguing to give
9	MR. TAMBE: Object to the form of	9	the witness coaching.
10	the question. Does 38 plus 7 equal 45?	10	MR. TAMBE: It's an improper
11	The math?	11	question.
12	MR. THOMAS: It's a speaking	12	MR. THOMAS: Improper objection.
13	objection. I've got the objection.	13	A. What's the question?
14			
			O. Do you understand if you add the 38
115	MR. TAMBE: These are not his notes.	14	Q. Do you understand if you add the 38 billion at this meeting where this was
15 16	MR. TAMBE: These are not his notes. MR. THOMAS: You kind of yelled the		billion at this meeting where this was
15 16 17	MR. TAMBE: These are not his notes. MR. THOMAS: You kind of yelled the objection, so I don't know if it was	14 15	billion at this meeting where this was discussed that you intended as part of your
16 17	MR. TAMBE: These are not his notes. MR. THOMAS: You kind of yelled the objection, so I don't know if it was like you know, what's going on here.	14 15 16	billion at this meeting where this was discussed that you intended as part of your assignment to figure out what the deal was
16 17 18	MR. TAMBE: These are not his notes. MR. THOMAS: You kind of yelled the objection, so I don't know if it was like you know, what's going on here. MR. TAMBE: I will tell you what's	14 15 16 17 18	billion at this meeting where this was discussed that you intended as part of your
16 17 18 19	MR. TAMBE: These are not his notes. MR. THOMAS: You kind of yelled the objection, so I don't know if it was like you know, what's going on here. MR. TAMBE: I will tell you what's going on. What's going on here is	14 15 16 17 18 19	billion at this meeting where this was discussed that you intended as part of your assignment to figure out what the deal was MR. TAMBE: Objection. Lack of foundation.
16 17 18 19 20	MR. TAMBE: These are not his notes. MR. THOMAS: You kind of yelled the objection, so I don't know if it was like you know, what's going on here. MR. TAMBE: I will tell you what's going on. What's going on here is MR. THOMAS: The federal rules	14 15 16 17 18 19 20	billion at this meeting where this was discussed that you intended as part of your assignment to figure out what the deal was MR. TAMBE: Objection. Lack of foundation. MR. THOMAS: I haven't even asked
16 17 18 19 20 21	MR. TAMBE: These are not his notes. MR. THOMAS: You kind of yelled the objection, so I don't know if it was like you know, what's going on here. MR. TAMBE: I will tell you what's going on. What's going on here is MR. THOMAS: The federal rules require you to not make these kind of	14 15 16 17 18 19 20	billion at this meeting where this was discussed that you intended as part of your assignment to figure out what the deal was MR. TAMBE: Objection. Lack of foundation. MR. THOMAS: I haven't even asked the question yet.
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16 17 18 19 20 21	MR. TAMBE: These are not his notes. MR. THOMAS: You kind of yelled the objection, so I don't know if it was like you know, what's going on here. MR. TAMBE: I will tell you what's going on. What's going on here is MR. THOMAS: The federal rules require you to not make these kind of	14 15 16 17 18 19 20	billion at this meeting where this was discussed that you intended as part of your assignment to figure out what the deal was MR. TAMBE: Objection. Lack of foundation. MR. THOMAS: I haven't even asked the question yet.

	Pg 15	<u> </u>	154
	Page 74		Page 75
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	MR. TAMBE: Object to the form of	2	the question. Lack of foundation. Asked
3	the question. Lack of foundation.	3	and answered.
4	A. 38 and 7 is 45, correct.	4	A. I'm sorry. Is there a question?
5	Q. Okay. Is there any doubt in your	5	Q. Yes. Do you understand the
6	mind that when it says here "paid 38 billion in	6	reference to the 38 billion there paid in cash
7	cash" that that's referring to the 45 billion	7	to be simply the 45 billion that Barclays paid
8	that Barclays paid minus the 7 billion that	8	in cash minus the 7 billion over which there
9	went missing?	9	was a dispute because Barclays didn't get the
10	A. I do not know.	10	assets that it was supposed to get?
11	MR. TAMBE: Objection to the form of	11	MR. TAMBE: Object to the form of
12	the question.	12	the question. Lack of foundation. Asked
13	Q. You don't know? You have no idea?	13	and answered.
14	A. I didn't write this.	14	A. I don't know what this means.
15	Q. I understand, but that's not my	15	Q. So it's your testimony that you have
16	question.	16	no idea what that "paid 38 billion in cash" is
17	Is it your understanding that the 38	Ī7	referring to?
18	billion is 38 billion there in paid cash	18	A. What I recall is the numbers I
19	because it's taking out from the 45 billion in	19	recall is a \$50 billion number and a
20	cash that Barclays paid the 7 billion which	20	\$45 billion number. That's what I recall from
21		21	this meeting.
22	ended up not going across in the transaction	22	
	and ended up being the subject of an extensive	22	Q. And you recall there being a dispute
23	settlement agreement in which you were	23	about \$7 billion for which Barclays did not
24	involved?	24	receive the securities that it was supposed to
25	MR. TAMBE: Object to the form of	25	receive on the night of that Thursday and that
	Page 76		Page 77
1	Fogarty - Highly Confidential		
. —		1	Fogarty - Highly Confidential
2		$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	Fogarty - Highly Confidential A. I don't recall that over that
2	subsequently it was supposed to receive	2	A. I don't recall that over that
2 3	subsequently it was supposed to receive \$7 billion back in cash and then ultimately was	2 3	A. I don't recall that over that weekend, no.
2 3 4	subsequently it was supposed to receive \$7 billion back in cash and then ultimately was the subject of a settlement agreement in	2 3 4	A. I don't recall that over that weekend, no.Q. Do you recall the \$7 billion figure
2 3 4 5	subsequently it was supposed to receive \$7 billion back in cash and then ultimately was the subject of a settlement agreement in December of 2008?	2 3 4 5	A. I don't recall that over that weekend, no.Q. Do you recall the \$7 billion figure being an issue?
2 3 4 5 6	subsequently it was supposed to receive \$7 billion back in cash and then ultimately was the subject of a settlement agreement in December of 2008? MR. TAMBE: Objection to the form of	2 3 4 5 6	A. I don't recall that over that weekend, no.Q. Do you recall the \$7 billion figure being an issue?A. I recall there being an issue with
2 3 4 5 6 7	subsequently it was supposed to receive \$7 billion back in cash and then ultimately was the subject of a settlement agreement in December of 2008? MR. TAMBE: Objection to the form of the question. Asked and answered.	2 3 4 5 6 7	A. I don't recall that over that weekend, no. Q. Do you recall the \$7 billion figure being an issue? A. I recall there being an issue with JPMorgan in the transaction.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 19 19 19 20 21 22 23 23 24 25 25 25 25 25 25 25 25 25 25	subsequently it was supposed to receive \$7 billion back in cash and then ultimately was the subject of a settlement agreement in December of 2008? MR. TAMBE: Objection to the form of the question. Asked and answered. A. I don't know. I don't know. I don't know the settlement that you I don't know the settlement you mentioned. Q. Do you recall that there was a \$7 billion issue with Barclays not getting securities it was supposed to get in return for that \$7 billion? A. I recall that there was some sort of settlement, yes, between JPMorgan and Barclays and LBI and I can't remember the details. Q. Do you recall when you were following the deal over the weekend and your references in your e-mails to JPM being at Weil, do you recall those e-mails? A. I do. Q. Do you recall at some point over the	2 3 4 5 6 7 8 9 0 1 1 2 1 3 1 4 1 5 6 1 7 1 8 9 2 0 2 1 2 2 2 2 2 3 2 2 2 2 2 3 2 2 2 2 2 2	A. I don't recall that over that weekend, no. Q. Do you recall the \$7 billion figure being an issue? A. I recall there being an issue with JPMorgan in the transaction. Q. And do you recall the \$7 billion figure? A. I recall I recall the \$7 billion figure, yes. Q. Is there any doubt in your mind that paid 38 billion here in cash is simply referring to the \$45 billion paid by Barclays minus the \$7 billion? MR. TAMBE: Objection, asked and answered. Objection, lack of foundation. Objection, form. A. I do not know. Q. No idea how they what that \$38 billion is referring to? A. I didn't write it, so I don't know.

of the page does this e an effort at some type of a recall the 45 and the 50 to you have any explanation aling with the 38 and 43 to 38E: Objection to the form of eack of foundation. The under Assets at the top is "repo" and then to the	appear to you to be an elbalance sheet? A. Yes. Q. And if you recal billion numbers, do you for why we are dealing vnumbers? MR. TAMBE: On the question. Lack of A. I don't recall. Q. Do you see under the part of the part of the question.	1 2 3 4 5 6 7 8 9	Fogarty - Highly Confidential That's what I recall. Q. Now, when you say 50, do you recall there being a nominal valuation of 49.9 or 49.7? A. I don't recall that number. Q. In any event, you do recall this approximately \$5 billion difference in valuations being discussed in the meeting with Kirk and Tonucci? MR. TAMBE: Objection to the form of
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all. e under Assets at the top s "repo" and then to the	A. I don't recall. Q. Do you see under	12	and the second s
e under Assets at the top s "repo" and then to the	Q. Do you see unde		the question.
"repo" and then to the		13	A. I recall them describing fighting
	C (1)	14	about the difference between 50 and 45.
then it says "5" and then	of that page it says "repo	15	Q. And you understood that to be a
	right it says "38," then it	16	difference in valuation
	it says "43.1B"?_	17	MR. TAMBE: Objection to form.
	A. I see that.	18	Q of what question of what
derstand that to be	Q. Do you understa	19	securities were actually worth versus what they
this \$5 billion valuation	_	20	were nominally marked at?
	issue?	21	MR. TAMBE: Object to the form of
BE: Objection to the form of	MR. TAMBE: O	22	the question.
	the question. Lack of	23	A. I recall, yes, there being two
	A. I do not know w	24	different numbers relative to the transaction.
	referring to.	25	Q. And if you would turn the page,
Page 81		30	
	Engants - Highly C		
E: Same objection. Lack of			
iswer as to what I think?	A. Snould I answer	1 1	is a reference to where it says "deal hits,
		4	3.45." Do you see that?
31: 3/	Q. Yes.	5	3.45." Do you see that? A. I see that.
BE: You can answer what	Q. Yes. MR. TAMBE: Y		3.45." Do you see that?A. I see that.Q. Do you remember there being first
an to you, yes.	Q. Yes. MR. TAMBE: Y those words mean to	5 6 7	3.45." Do you see that?A. I see that.Q. Do you remember there being first of all, do you have just from reading this,
an to you, yes. te an accountant trying	Q. Yes. MR. TAMBE: Y those words mean to A. It looks like an a	5 6 7 8	3.45." Do you see that? A. I see that. Q. Do you remember there being first of all, do you have just from reading this, do you have an understanding what that's
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ghly Confidential BE: Same objection. Lac nswer as to what I think?	Fogarty - Highly C MR. TAMBE: Sa foundation.	1 2 3	Page 8 Fogarty - Highly Confidential Q. And in the right-hand column there

	Py 10	1 01	104
	Page 82	2	Page 83
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2		2	THE VIDEOGRAPHER: The time is
	at the meeting, the difference between 50 and	3	11:31. We are back on the record.
3	45 that I mentioned before, that's what I		
4	recall.	4	BY MR. THOMAS:
5	Q. Right. Do you recall any discussion	5	Q. Mr. Fogarty, do you know a Mary
6	about a loss on the deal or deal hits?	6	Korycki at Alvarez & Marsal?
7	A. No.	7	A. Yes.
8	Q. And having looked at this, you have	8	Q. And was she at this meeting that you
9	no understanding of whose handwriting this is?	9	attended with Mr. Tonucci and Mr. Kirk?
10	A. I don't know.	10	A. She probably was, but I don't recall
11	MR. TAMBE: Objection. Asked and	11	specifically.
11 12	answered.	12	MR. THOMAS: Let me go ahead and
13	Q. Did you take notes at that meeting?	13	show you a document we will mark as
	A. No.	14	Exhibit 564-B.
14 15 16	Q. Do you know who was taking notes?	15	(Exhibit 564-B, Lehman
16	A. I don't know.	16	Brothers/Barclays APA Lead Sheet, Bates
17	Q. Let me go ahead and show you a	17	stamped AM 004893 through AM 004896, marked
18	document we will mark as	18	for identification.)
19	MR. TAMBE: Can we take a break	19	MR. TAMBE: Just before you ask
		20	· ·
20	before you show him the next document?		about the document, I just want to be clear
21	MR. THOMAS: Sure, yes, go ahead.	21	that we did tell you at the break whose
22	THE VIDEOGRAPHER: The time is	22	handwritten notes those were.
23	11:20. We are going off the record.	23	MR. THOMAS: Right.
24	(Recess was taken from 11:20 to	24	MR. TAMBE: I just want to be clear
25	11:31.)	25	on the record that you were given that
	Page 84	1	Page 85
1			
1 2	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	Fogarty - Highly Confidential information.	1 2	Fogarty - Highly Confidential Q. Assuming these are her notes, does
2	Fogarty - Highly Confidential information. MR. THOMAS: Okay.	1 2 3	Fogarty - Highly Confidential Q. Assuming these are her notes, does that make it more likely that this was, in
2 3 4	Fogarty - Highly Confidential information. MR. THOMAS: Okay. Q. Does that refresh your recollection	1 2 3 4	Fogarty - Highly Confidential Q. Assuming these are her notes, does that make it more likely that this was, in fact, a meeting you were at?
2 3 4 5	Fogarty - Highly Confidential information. MR. THOMAS: Okay. Q. Does that refresh your recollection at all about who was at the meeting, the fact	1 2 3 4 5	Fogarty - Highly Confidential Q. Assuming these are her notes, does that make it more likely that this was, in fact, a meeting you were at? A. Yes, more likely.
2 3 4 5 6	Fogarty - Highly Confidential information. MR. THOMAS: Okay. Q. Does that refresh your recollection at all about who was at the meeting, the fact that Miss Korycki was there?	1 2 3 4 5 6	Fogarty - Highly Confidential Q. Assuming these are her notes, does that make it more likely that this was, in fact, a meeting you were at? A. Yes, more likely. Q. Let me show you a document marked
2 3 4 5 6 7	Fogarty - Highly Confidential information. MR. THOMAS: Okay. Q. Does that refresh your recollection at all about who was at the meeting, the fact that Miss Korycki was there? MR. TAMBE: Object to the form of	1 2 3 4 5 6 7	Fogarty - Highly Confidential Q. Assuming these are her notes, does that make it more likely that this was, in fact, a meeting you were at? A. Yes, more likely. Q. Let me show you a document marked Exhibit 564-B.
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	Py 130		
	Page 86		Page 87
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	Q. Under your direction?	2	this one at the top, yes.
3	A. Correct.	3	Q. Do you recognize this as an e-mail
4	Q. And what was the purpose of	4	that you sent on or about this time?
5	preparing this chart?	5	A. Let me read it here.
6	A. To understand what securities had	6	(Document review.)
7	transferred under the agreement so that the	7	A. Okay. Yes, I recognize this.
8	asset teams our asset teams at Lehman would	8	Q. And can you describe what the
9	know what was transferred.	9	attachment is?
10	Q. Do you know if you ever saw this	10	A. This was certain securities that
11	document before with the handwriting?	11	were my recollection is certain securities
12	A. Definitely not.	12	that were to move as part of the transaction.
13	Q. You definitely have not seen it	13	Q. Are these the clearing box
14	before?	14	securities?
15	A. No. I don't recall it anyway. I	15	MR. TAMBE: Object to the form of
16	don't recall this.	16	the question.
17	Q. Let me go ahead and show you a	17	A. The what I recall is the
18	1 V	18	unencumbered box was the way I recall it and
19	(Document review.)	19	that was that this was part of that process.
20	Q. Do you recognize this as an e-mail	20	Q. And why were you obtaining this
21	from yourself dated September 29th, 2008?	21	information? Was that part of your effort to
22	A. 29th or 28?	22	make sure you understood what assets went over
23	Q. Well, at the top it appears to say	23	as part of the transaction and which didn't?
24		24	A. We were obtaining this to make sure
25		25	that we understood what was really ultimately
	Page 88		Page 89
1	Fogarty - Highly Confidential		
			Fogarty - Highly Confidential
2	going to be that we had control over what	2	the e-mails, was there ever any point in time
3	going to be that we had control over what was going over and what was that we	2 3	the e-mails, was there ever any point in time where anyone at Lehman or Weil or anywhere else
3 4	going to be that we had control over what was going over and what was that we understood what was going over and what was	2 3 4	the e-mails, was there ever any point in time where anyone at Lehman or Weil or anywhere else refused to give you information that you
3 4 5	going to be that we had control over what was going over and what was that we understood what was going over and what was then left behind.	2 3 4 5	the e-mails, was there ever any point in time where anyone at Lehman or Weil or anywhere else refused to give you information that you thought was important to understanding what
3 4 5 6	going to be that we had control over what was going over and what was that we understood what was going over and what was then left behind. MR. THOMAS: Let me show you a	2 3 4	the e-mails, was there ever any point in time where anyone at Lehman or Weil or anywhere else refused to give you information that you thought was important to understanding what assets and liabilities were transferred and
3 4 5	going to be that we had control over what was going over and what was that we understood what was going over and what was then left behind. MR. THOMAS: Let me show you a document we will mark as Exhibit 565-B.	2 3 4 5 6 7	the e-mails, was there ever any point in time where anyone at Lehman or Weil or anywhere else refused to give you information that you thought was important to understanding what
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1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	understand the transaction, yes.	2	information that you asked for but didn't get?
3	Q. Is that because it was a very busy	3	A. Personally?
3 4	time, tumultuous time?	4	
4			Q. You personally, yes.
5	A. I don't I don't know why that	5	A. No.
6	there wasn't more time the estate took a	6	Q. To your knowledge, anyone else on
7	back seat to the interests of Barclays in	7	the Alvarez team?
8	general.	8	A. Yes. The team had a difficult time
9	Q. What's your basis for that	9	getting things that they asked for along the
10	statement?	10	way, yes.
11	A. We had these attempts under way and	11	Q. Well, we are going to have to be
12 13	then we had attempts under way to get services	12	more specific. Can you identify any particular
13	under the transition services agreement, which	13	documents or specific information that someone
14	I was responsible for with Bill Gordon, and we	14	on your team asked for but did not get?
15	had a difficult time getting Barclays to	15	A. I can recall a number of various
16	provide support in that under that	16	things that Al Lakhani's team was trying to
17	agreement, and we had a difficult time getting	17	obtain from Barclays along the way and we were
18	Barclays to help us understand understand	18	having Al Lakhani, Phil Kruse and others trying
19	the estate and what we were managing.	19	to understand this transaction over time and we
20	Q. Putting aside the Transition	20	had a difficult time getting the things that we
21			
	Services Agreement, the TSA, just with respect	21 22	were asking for.
22	to your efforts to understand the sale	22	Q. Can you identify something
23	transaction and what assets and liabilities	23	specifically?
24	were conveyed and what weren't, was there	24	A. No.
25	any were there any documents or pieces of	25	Q. I mean, you had CUSIP lists of the
	Page 92		Page 93
1	Faccuter Highly Confidential	1	Foresty Highly Confidential
2 3	Fogarty - Highly Confidential		Fogarty - Highly Confidential
2	securities that went over as part of the deal;	2	asking for something like the list of
	correct?	3	securities that we are looking at here and that
4	A. Well, we had lists, yes, and	4	we looked at in previous documents but they
5	there let's see. We had lists by security,		
6	NOC	5	didn't receive?
	yes.	5	A. I don't recall any specific item,
1	Q. Was there so did you at least	6 7	A. I don't recall any specific item, no.
8	Q. Was there so did you at least feel like you fully understood the assets that	6 7 8	A. I don't recall any specific item,no.Q. So is it fair to say, putting aside
9	Q. Was there so did you at least feel like you fully understood the assets that went over, putting aside this kind of general	6 7 8 9	A. I don't recall any specific item,no.Q. So is it fair to say, putting aside information about the difference in the
9	Q. Was there so did you at least feel like you fully understood the assets that went over, putting aside this kind of general understanding of hows and whys about the deal,	6 7 8 9	A. I don't recall any specific item, no. Q. So is it fair to say, putting aside information about the difference in the valuation, the approximately \$5 billion
9 10 11	Q. Was there so did you at least feel like you fully understood the assets that went over, putting aside this kind of general understanding of hows and whys about the deal, did you understand what assets went over and	6 7 8 9 10 11	A. I don't recall any specific item,no.Q. So is it fair to say, putting aside information about the difference in the
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1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	Q. Okay. And at some later point in	2	that we didn't understand initially.
3		3	
	time after September did you learn that some		Q. But you can't identify any?
4	asset was conveyed that you didn't know about	4	A. No. It's been a while. I can't
5	back in September?	5	recall.
6	A. There were things that came up and I	6	Q. But in any event you had lists of
7	can't recall the specifics.	7	the securities that went over in connection
8	Q. Do you believe	8	with the repo and that went over in connection
9	A. Whether it was in the private equity	9	with the clearing box, correct, the
10	book or I just can't recall the specifics.	10	unencumbered box?
11		11	A. Yes.
12		12	Q. Let me go ahead and show you a
13		13	document that's been previously marked as
14	Q. Can you identify any of those?	14	463-B.
15	A. I can't.	15	(Document review.)
16	Q. Were any of those items what you	16	Q. This is an e-mail from Conor Tully.
17	would consider material?	17	Do you know who Conor Tully is?
18	MR. TAMBE: Objection to the form of	18	A. He was on the FTI team.
19	the question.	19	Q. And what was FTI's role?
20	A. There were material things that	20	A. Working for the creditors.
21	yes.	21	Q. And what were they doing for the
22	Q. Can you identify those?	22	Creditors Committee?
23	A. I can't recall the specifics where	23	A. Advisory services to the Creditors
24		24	Committee for the case.
25	I there were things that we were	25	
2.5	understanding about the transaction over time	23	Q. In terms of financial advice?
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1 2	Fogarty - Highly Confidential	_	Fogarty - Highly Confidential
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10 estate assets. Q. Let me ask you to turn to the attachment. Let me ask, have you ever seen this document before, the e-mail from Conor 14 Tully? A. I have not. Q. Looking at the attachment, at the bottom it says "Alvarez & Marsal." Let me ask do you recognize the 10 A. There were so many verification in the seen stuff like this recall that this that this version can't recall this version. Q. Do you know who put version or this document? A. Mary Korycki was also the finance guys and this is an of an approach to understandin	s. I can't on I
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attachment. Let me ask, have you ever seen this document before, the e-mail from Conor Tully? A. I have not. Q. Looking at the attachment, at the bottom it says "Alvarez & Marsal." Let me ask do you recognize the recall that this that this version can't recall this version. Q. Do you know who put version or this document? A. Mary Korycki was also the finance guys and this is an of an approach to understandin	on I
this document before, the e-mail from Conor Tully? A. I have not. Q. Looking at the attachment, at the bottom it says "Alvarez & Marsal." Let me ask do you recognize the can't recall this version. Q. Do you know who put version or this document? A. Mary Korycki was also the finance guys and this is an of an approach to understandin	
14 Q. Do you know who put 15 A. I have not. 16 Q. Looking at the attachment, at the 17 bottom it says "Alvarez & Marsal." 18 Let me ask do you recognize the 19 Q. Do you know who put version or this document? 10 A. Mary Korycki was also the finance guys and this is an of an approach to understandin	
Q. Looking at the attachment, at the bottom it says "Alvarez & Marsal." Let me ask do you recognize the Let me ask do you rec	together this
Q. Looking at the attachment, at the bottom it says "Alvarez & Marsal." Let me ask do you recognize the Let me ask do you rec	together this
bottom it says "Alvarez & Marsal." Let me ask do you recognize the 17 the finance guys and this is an of an approach to understandin	working with
Let me ask do you recognize the 18 of an approach to understandin	
attachment? 19 working with the finance guys	
20 A. I do not. I recognize these 20 over time, which would have b	
footnotes. I don't recognize this exact 21 that's what I presume.	cen Bin rox, so
document. 22 Q. And, I'm sorry, Bill Fo	v worked with
Q. What are the footnotes? Can you 23 your group or separately?	A WOLKER WITH
describe what the footnotes are? 24 A. We would all work tog	ether on things
25 A. The A and the B. The assets 25 over time, but Bill Fox was y	
Page 100	Page 101
Fogarty - Highly Confidential 1 Fogarty - Highly Confidential	ntial
all on the same Alvarez & Marsal team. 2 meeting between the 38 and the	43?
Q. Was he on your particular team MR. TAMBE: Objection	n to the form of
within Alvarez & Marsal or was it separate? 4 the question. Lack of found	ation.
A. No, he and David Coles were working A. The 5 billion is, again,	unless it's
the finance specific pieces of the case, serendipity here, this is the 5 bi	llion that I
7 accounting/finance pieces. 7 had in my head from the meeting	ng and I had in my
8 Q. You think it may have been Bill Fox 8 head a difference between 50 at	nd 45.
that would have put together this document? 9 Q. And do you recall there	being a
A. Perhaps. 10 \$7 billion box loan?	
Q. Was either Bill Fox or David Coles 11 MR. TAMBE: Objectio	n to the form of
with you at the September 29th meeting with 12 the question.	
Tonucci and Kirk? A. I don't know what that	phrase means.
MR. TAMBE: Objection to form. 14 Q. Box loan?	
A. I'm fairly certain David Coles was 5 A. I don't know what that	•
there and I can't recall if Bill Fox was there. Q. Do you see in the we	ll, strike
Q. And, again, looking at the first 17 that.	
sheet of the attachment, do you see where it Do you see where it says	s "net book
says "38 billion repo assets negotiated a loss, 3.27"?	
haircut and the assets transferred under 20 A. I do.	
repo" slash and then parentheses "stale marks"? 21 Q. What is your understan	ding of what
22 A. I see that. 22 "net book loss" means?	
Q. Do you understand this to be MR. TAMBE: Objection	n to form. Lack
referring to that same approximately \$5 billion valuation issue that was discussed in your 9-29 24 of foundation. A. My understanding is it's	
valuation issue that was discussed in your 9-29 A. My understanding is it	s an

	Pg 162		
	Page 102		Page 103
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	accountant's approach to have the two sides	2	A. Correct.
3	equal one another, to have the 47.31 and the	3	Q. And do you know why FTI would have
4	47.31 equate, and that is the then plug to make	4	an Alvarez & Marsal sheet like that attached to
5	the two add up.	5	Exhibit 463-B?
6	Q. Would that reflect the loss on the	6	MR. TECCE: Objection to form.
	deal from the Lehman perspective?	7	A. It's fairly common that in our
78	MR. TAMBE: Objection to the form.	8	business we work very closely with the advisors
9	Lack of foundation.	9	to the committees and try to and share our
10	A. This is not how again, I'm not a	10	understanding, because we are ultimately
11	valuation person. This is an attempt to do	11	working for the creditors who they advise.
12	accounting as my understanding of what it	12	Q. And is that what happened in this
13	is, it's an attempt to do the accounting.	13	case?
14	Q. So you don't understand "net book	14	MR. TECCE: Objection.
15	loss" to be referring to a loss on the	15	A. I do not know.
16	transaction	16	Q. Well, with respect to the Barclays
17	A. No, because	17	sale transaction, did you work with and
18	MR. TAMBE: Objection to form. Lack	18	cooperate with the committee's advisors?
19	of foundation.	19	MR. TAMBE: Objection to the form of
20	A. I understand accounting and value	20 <mark>21</mark>	the question.
21	are not the same, and so book means book values	21	A. I did not work with the FTI folks in
22	as opposed to value.	22	any understanding of this transaction
23	Q. So there might be a difference	23	personally.
24	between the book value of assets and their	24	Q. Do you know if Alvarez & Marsal did?
25	actual market value?	25	A. I actually did not know I did not
	Page 104		Page 105
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	have an understanding of that until I saw Bill	2	e-mail from her dated October 6th, 2008?
3	Fox's name on this, so I didn't know what they	3	A. I do.
4	were doing.	4	Q. Do you see that it refers to
5	Q. Let me show you a document	5	materials for a 6 p.m. meeting?
6	previously marked as 494.	6	A. I do.
7	(Document review.)	7	Q. Do you have any understanding
8	A. Okay.	8	what and then in the subject line it says
9	Q. Do you recognize this document?	9	"materials for 6 p.m. meeting with Paolo
10	A. I do not. I recognize that I'm	10	Tonucci re JPM \$7 billion." Do you see that?
11 12	listed on it, but I or am I listed on it?	11	A. I see that.
12	Hold on a minute. No, I'm not listed on it, I	12	Q. Do you know if you were a
13	don't think. No, I don't the some of the	13	participant in that meeting?
14	footnotes in the thing I recognize, but I don't	14 15	A. I do not believe so.
1 -			
15	recognize the document.		Q. Did you know that that meeting was
15 16	Q. And which footnotes do you	16	going on?
15 16 17	Q. And which footnotes do you recognize?	16 17	going on? A. I knew we had that overall effort
15 16 17 18	Q. And which footnotes do you recognize? A. The page 3, 4 I actually don't	16 17 18	going on? A. I knew we had that overall effort under way to continue to try to understand the
15 16 17 18 19	Q. And which footnotes do you recognize? A. The page 3, 4 I actually don't recognize 5. I recognize 3, 4 and 6 as, at	16 17 18 19	going on? A. I knew we had that overall effort under way to continue to try to understand the transactions and so forth.
15 16 17 18 19 20	Q. And which footnotes do you recognize? A. The page 3, 4 I actually don't recognize 5. I recognize 3, 4 and 6 as, at least in form, the kinds of schedules that I	16 17 18 19	going on? A. I knew we had that overall effort under way to continue to try to understand the transactions and so forth. Q. If you would look at the attachment
15 16 17 18 19 20 21	Q. And which footnotes do you recognize? A. The page 3, 4 I actually don't recognize 5. I recognize 3, 4 and 6 as, at least in form, the kinds of schedules that I recall.	16 17 18 19 20 21	going on? A. I knew we had that overall effort under way to continue to try to understand the transactions and so forth. Q. If you would look at the attachment at titled A Recap of Week Ended 9-19, page
15 16 17 18 19 20 21	Q. And which footnotes do you recognize? A. The page 3, 4 I actually don't recognize 5. I recognize 3, 4 and 6 as, at least in form, the kinds of schedules that I recall. Q. And is this the Mary Korycki that	16 17 18 19 20 21 22	going on? A. I knew we had that overall effort under way to continue to try to understand the transactions and so forth. Q. If you would look at the attachment at titled A Recap of Week Ended 9-19, page AM 3877.
15 16 17 18 19 20 21 22	Q. And which footnotes do you recognize? A. The page 3, 4 I actually don't recognize 5. I recognize 3, 4 and 6 as, at least in form, the kinds of schedules that I recall. Q. And is this the Mary Korycki that worked with your group and reported up to you?	16 17 18 19 20 21 22 23	going on? A. I knew we had that overall effort under way to continue to try to understand the transactions and so forth. Q. If you would look at the attachment at titled A Recap of Week Ended 9-19, page AM 3877. A. Yes.
15 16 17 18 19 20 21	Q. And which footnotes do you recognize? A. The page 3, 4 I actually don't recognize 5. I recognize 3, 4 and 6 as, at least in form, the kinds of schedules that I recall. Q. And is this the Mary Korycki that	16 17 18 19 20 21 22	going on? A. I knew we had that overall effort under way to continue to try to understand the transactions and so forth. Q. If you would look at the attachment at titled A Recap of Week Ended 9-19, page AM 3877.

Page 106 Page 107 Fogarty - Highly Confidential Fogarty - Highly Confidential 1 2 A. I don't recall this page. 2 reflected in the meeting notes was, in fact, 3 Q. If you would -- do you see under 3 the 45 billion paid by Barclays minus the 7 Wednesday -- well, strike that. 4 4 billion? 5 Do you see under Thursday a 5 MR. TAMBE: Objection to form and 6 description concerning the Fed repo 6 lack of foundation. 7 7 transaction? A. I don't know this page. I don't A. I see Thursday 9/18 and I see words 8 8 know what -- I mean, it's -- the numbers are 9 similar numbers from the other pages. I just 9 there. 0 10 don't -- I don't know this page. O. Okay. Do you see the third bullet 1 point says: "JPM repaid the Fed 38 billion out 11 Q. The question is does the information 12 of the Barclays 45 plus an additional 7 billion on this page refresh your recollection that the 2 by selling or lending against other Lehman 13 38 billion paid by Barclays was simply the 45 3 4 securities previously held by JPM, the 14 billion minus the 7 billion over which there remaining 7 billion from the Barclavs 45 5 15 was a dispute involving JPM? 16 6 billion," then it says, parentheses, "45 MR. TAMBE: Objection to the form of .7 billion minus 38 billion" --17 the question. 8 18 A. I remember there was -- yes, there A. Uh-huh. 19 9 Q. -- "was held by JPM in a separate was a \$50 billion number and a \$45 billion 20 account for the benefit of Barclays," do you 20 number and the differential was 5 and there was 21 21 see that? a piece of it that related to JPMorgan that was 22 22 part of that settlement we referred to earlier A. I see that. 23 and I don't recall the 38 and the 7 2.3 Q. Does this refresh your recollection 24 that the \$38 billion number that was being 24 specifically. 25 O. But the 38 and the 43 that we 25 discussed in the meeting you attended and Page 108 Page 109 Fogarty - Highly Confidential Fogarty - Highly Confidential 1 1 2 discussed earlier reflected in the meeting 2 A. I don't recall that number. 3 3 notes is simply the 45 and the 50 minus the 7 Q. Do you have any other explanation billion on each side; right? 4 4 for the difference being discussed in the 5 MR. TAMBE: Objection to the form 5 meeting between the 38 billion and the 43 6 6 and lack of foundation. billion other than the fact that it's simply 7 the 45 billion versus the 50 billion but A. I don't know. 8 8 Q. Is that what you assume it to be? backing out the 7 billion on each side? 9 MR. TAMBE: Objection. Calls for 9 MR. TAMBE: Objection to form. Lack of foundation. Calls for speculation. 0 speculation. 10 11 A. I assume that -- at my level what I 11 A. No. understood and focused on was there was a 12 MR. TAMBE: Asked and answered. \$50 billion number and there was a conversation 13 O. At the bottom here, the last 14 about 45 versus 50 and it was different by 5, 14 footnote on page AM 3877, it says: "The Fed 15 and I also understood that there was a piece of 15 loaned 45 billion via JPM in exchange for 16 16 it relative to JPMorgan and I can't remember approximately 48 billion of collateral. When the specific details of that piece of it. 17 the Fed returned the collateral, JPM held the 18 18 Q. And when you heard about the balance of collateral, approximately 19 difference in the meeting, 38 billion versus 43 19 8.6 billion, revalued marked at approximately 7 20 billion, did you --20 billion." 21 MR. TAMBE: Objection. Are you knowledgeable about the A. I don't recall those numbers. I 2 basis for that remarking? 23 don't recall 43 billion. 23 A. No. Q. The 42.9 that we looked at in the Q. Let me ask you to turn the page. On 24 24 meeting notes, you don't recall that number? 25 AM 3878 under Consideration do you see in the

	Fy 10 ²		
	Page 110		Page 111
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	box where it says "loss on sale, 3.1 billion"?	2	proceeds by transaction.
3	A. I see that.	3	Q. Let me show you a document
4	Q. Do you understand that to be	4	previously marked as 461-A.
5	indicating that Lehman had a loss on the sale	5	Do you recognize this document?
6	transaction of about 3.1 billion?	6	A. Yes.
7	MR. TAMBE: Objection to the form.	7	Q. Would you describe what it is,
8	Lack of foundation.	8	please.
9	A. I understand that to be another form	9	A. It's a report to the Creditors
10		10	Committee. We would report on an ongoing basis
	of an accountant trying to have a plug to add		to the Creditors Committee.
11	up the two columns so that they equal, and you	11	
12	see very precisely the 47666.89 on both sides.	12	Q. And have you seen this document
13	Q. And so that could be just an	13	recently?
14	accounting loss as opposed to an actual value	14	THE WITNESS: Will I answer that?
15	loss?	15	MR. TAMBE: You can answer that.
16	A. Correct.	16	THE WITNESS: Okay.
17	Q. And if it was the case that the	17	A. I saw this document recently in my
18	assets some assets were had a higher book	18	meeting with counsel.
19	· · · · · · · · · · · · · · · · · · ·	<mark>19</mark>	Q. How much time did you spend with
20	be one basis for explaining why it would be an	20	Jones Day preparing for this deposition?
21	accounting loss; correct?	21	A. Too much. Seriously, was it an hour
22	MR. TAMBE: Objection to the form of	22	and a half? Just discussing the upcoming day
23	the question. Lack of foundation.	23	and then I threw them out and went back to the
24	A. An accounting loss has to do with	24	daily business.
25	the difference between GAAP carrying value and	25	MR. TAMBE: He did throw us out.
23	the difference between GAAI carrying value and		WIR. 17 WIDE. The did throw us out.
	, ,	2.3	
23	Page 112	23	Page 113
1	Page 112 Fogarty - Highly Confidential	1	Page 113 Fogarty - Highly Confidential
1 2	Page 112 Fogarty - Highly Confidential Q. And what is the purpose for making	1 2	Page 113 Fogarty - Highly Confidential have been there, the two I would recall, from
1 2 3	Page 112 Fogarty - Highly Confidential	1	Page 113 Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal.
1 2 3 4	Page 112 Fogarty - Highly Confidential Q. And what is the purpose for making	1 2	Page 113 Fogarty - Highly Confidential have been there, the two I would recall, from
1 2 3	Page 112 Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee?	1 2 3	Page 113 Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal.
1 2 3 4	Page 112 Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee? A. Again, they are the key constituent	1 2 3 4	Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal. Q. And under Assets A. At least one or the other of them.
1 2 3 4 5	Page 112 Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee? A. Again, they are the key constituent in the bankruptcy case and we are this is	1 2 3 4 5	Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal. Q. And under Assets
1 2 3 4 5	Page 112 Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee? A. Again, they are the key constituent in the bankruptcy case and we are this is this would be a normal practice of the	1 2 3 4 5 6	Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal. Q. And under Assets A. At least one or the other of them. They weren't always both there. I just can't remember exactly. One or the other of them
1 2 3 4 5 6 7 8	Page 112 Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee? A. Again, they are the key constituent in the bankruptcy case and we are this is this would be a normal practice of the management team of the bankruptcy estate making	1 2 3 4 5 6 7	Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal. Q. And under Assets A. At least one or the other of them. They weren't always both there. I just can't remember exactly. One or the other of them would have been there, sure. Maybe both.
1 2 3 4 5 6	Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee? A. Again, they are the key constituent in the bankruptcy case and we are this is this would be a normal practice of the management team of the bankruptcy estate making sure they keep the creditor group well informed	1 2 3 4 5 6 7 8	Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal. Q. And under Assets A. At least one or the other of them. They weren't always both there. I just can't remember exactly. One or the other of them would have been there, sure. Maybe both. Q. Under Assets Purchased, the
1 2 3 4 5 6 7 8	Page 112 Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee? A. Again, they are the key constituent in the bankruptcy case and we are this is this would be a normal practice of the management team of the bankruptcy estate making sure they keep the creditor group well informed of what we are trying to accomplish.	1 2 3 4 5 6 7 8 9	Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal. Q. And under Assets A. At least one or the other of them. They weren't always both there. I just can't remember exactly. One or the other of them would have been there, sure. Maybe both. Q. Under Assets Purchased, the "43.1 billion repo assets, book value per
1 2 3 4 5 6 7 8 9	Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee? A. Again, they are the key constituent in the bankruptcy case and we are this is this would be a normal practice of the management team of the bankruptcy estate making sure they keep the creditor group well informed of what we are trying to accomplish. Q. And the section entitled Significant Transactions, is that a section of this	1 2 3 4 5 6 7 8 9 10 11	Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal. Q. And under Assets A. At least one or the other of them. They weren't always both there. I just can't remember exactly. One or the other of them would have been there, sure. Maybe both. Q. Under Assets Purchased, the "43.1 billion repo assets, book value per Lehman stale marks, negotiated a \$5 billion
1 2 3 4 5 6 7 8 9 10 11 12	Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee? A. Again, they are the key constituent in the bankruptcy case and we are this is this would be a normal practice of the management team of the bankruptcy estate making sure they keep the creditor group well informed of what we are trying to accomplish. Q. And the section entitled Significant Transactions, is that a section of this document that you helped prepare?	1 2 3 4 5 6 7 8 9 10 11 12	Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal. Q. And under Assets A. At least one or the other of them. They weren't always both there. I just can't remember exactly. One or the other of them would have been there, sure. Maybe both. Q. Under Assets Purchased, the "43.1 billion repo assets, book value per Lehman stale marks, negotiated a \$5 billion reduction," do you see that?
1 2 3 4 5 6 7 8 9 10 11 12 13	Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee? A. Again, they are the key constituent in the bankruptcy case and we are this is this would be a normal practice of the management team of the bankruptcy estate making sure they keep the creditor group well informed of what we are trying to accomplish. Q. And the section entitled Significant Transactions, is that a section of this document that you helped prepare? A. Yes.	1 2 3 4 5 6 7 8 9 10 11 12 13	Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal. Q. And under Assets A. At least one or the other of them. They weren't always both there. I just can't remember exactly. One or the other of them would have been there, sure. Maybe both. Q. Under Assets Purchased, the "43.1 billion repo assets, book value per Lehman stale marks, negotiated a \$5 billion reduction," do you see that? A. I do.
1 2 3 4 5 6 7 8 9 10 11 12 13 14	Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee? A. Again, they are the key constituent in the bankruptcy case and we are this is this would be a normal practice of the management team of the bankruptcy estate making sure they keep the creditor group well informed of what we are trying to accomplish. Q. And the section entitled Significant Transactions, is that a section of this document that you helped prepare? A. Yes. Q. And more specifically, did you	1 2 3 4 5 6 7 8 9 10 11 12 13 14	Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal. Q. And under Assets A. At least one or the other of them. They weren't always both there. I just can't remember exactly. One or the other of them would have been there, sure. Maybe both. Q. Under Assets Purchased, the "43.1 billion repo assets, book value per Lehman stale marks, negotiated a \$5 billion reduction," do you see that? A. I do. Q. Is that the same \$5 billion
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee? A. Again, they are the key constituent in the bankruptcy case and we are this is this would be a normal practice of the management team of the bankruptcy estate making sure they keep the creditor group well informed of what we are trying to accomplish. Q. And the section entitled Significant Transactions, is that a section of this document that you helped prepare? A. Yes. Q. And more specifically, did you prepare the page that has the Bates stamp	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal. Q. And under Assets A. At least one or the other of them. They weren't always both there. I just can't remember exactly. One or the other of them would have been there, sure. Maybe both. Q. Under Assets Purchased, the "43.1 billion repo assets, book value per Lehman stale marks, negotiated a \$5 billion reduction," do you see that? A. I do. Q. Is that the same \$5 billion valuation difference that we have discussed
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee? A. Again, they are the key constituent in the bankruptcy case and we are this is this would be a normal practice of the management team of the bankruptcy estate making sure they keep the creditor group well informed of what we are trying to accomplish. Q. And the section entitled Significant Transactions, is that a section of this document that you helped prepare? A. Yes. Q. And more specifically, did you prepare the page that has the Bates stamp number AM 4531?	1 2 3 4 5 6 7 8 9 1 1 1 2 1 3 1 4 5 1 5 1 6	Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal. Q. And under Assets A. At least one or the other of them. They weren't always both there. I just can't remember exactly. One or the other of them would have been there, sure. Maybe both. Q. Under Assets Purchased, the "43.1 billion repo assets, book value per Lehman stale marks, negotiated a \$5 billion reduction," do you see that? A. I do. Q. Is that the same \$5 billion valuation difference that we have discussed previously in this deposition?
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee? A. Again, they are the key constituent in the bankruptcy case and we are this is this would be a normal practice of the management team of the bankruptcy estate making sure they keep the creditor group well informed of what we are trying to accomplish. Q. And the section entitled Significant Transactions, is that a section of this document that you helped prepare? A. Yes. Q. And more specifically, did you prepare the page that has the Bates stamp number AM 4531? A. I wouldn't have typed it, but I	1 2 3 4 5 6 7 8 9 10 11 2 3 14 15 6 7	Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal. Q. And under Assets A. At least one or the other of them. They weren't always both there. I just can't remember exactly. One or the other of them would have been there, sure. Maybe both. Q. Under Assets Purchased, the "43.1 billion repo assets, book value per Lehman stale marks, negotiated a \$5 billion reduction," do you see that? A. I do. Q. Is that the same \$5 billion valuation difference that we have discussed previously in this deposition? A. It is.
1 2 3 4 5 6 7 8 9 10 11 2 3 14 15 16 17 18	Fogarty - Highly Confidential Q. And what is the purpose for making this report to the Creditors Committee? A. Again, they are the key constituent in the bankruptcy case and we are this is this would be a normal practice of the management team of the bankruptcy estate making sure they keep the creditor group well informed of what we are trying to accomplish. Q. And the section entitled Significant Transactions, is that a section of this document that you helped prepare? A. Yes. Q. And more specifically, did you prepare the page that has the Bates stamp number AM 4531? A. I wouldn't have typed it, but I would have been absolutely aware of the page.	1 2 3 4 5 6 7 8 9 0 1 1 2 3 1 4 1 5 6 7 8 9 1 1 1 2 3 1 4 1 5 6 7 8 9 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	Fogarty - Highly Confidential have been there, the two I would recall, from Weil Gotshal. Q. And under Assets A. At least one or the other of them. They weren't always both there. I just can't remember exactly. One or the other of them would have been there, sure. Maybe both. Q. Under Assets Purchased, the "43.1 billion repo assets, book value per Lehman stale marks, negotiated a \$5 billion reduction," do you see that? A. I do. Q. Is that the same \$5 billion valuation difference that we have discussed previously in this deposition? A. It is. Q. And what was the basis for your
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1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	earlier with Paolo, some conversation around	2	September 15th that Lehman was not fully
3	the marks not having been trued up in a couple		updating its marks on a daily basis?
4	of days or something like that.	3 4	MR. TAMBE: Objection. Lack of
5	Q. Was it a couple days or was it since	5	foundation. Objection to form.
6	Friday, September 12th, the last business day	6	A. I did not know specifically other
7	before the bankruptcy filing?	7	than I knew via the Transition Services
8	MR. TAMBE: Objection to the form.	8	Agreement we were not getting updated marks on
9	A. I don't recall the exact time frame	9	a timely basis subsequent to, you know, the
10	that was referred to.	10	filing date.
11	Q. And who was that discussion with?	11	Q. When you say "we were not
12	MR. TAMBE: Objection. Asked and	12	getting"
13	answered.	13	A. Sorry, subsequent to actually, I
14	A. I believe that was with Alex Kirk.	14	had no subsequent to the transaction
15	Q. Was this part of that same meeting	15	after the transaction closing and pursuant to
16	with Mr. Kirk and Mr. Tonucci?	16	the Transition Services Agreement we were not
17	A. Yes.	17	getting updated marks during that time.
18	Q. And independent of that did you also	18	Q. The week of September 15th did you
19	understand that Lehman's marks	19	see any updated marks during that week?
20	A. Can I just clarify?	20	A. No.
21	Q. Sure.	21	MR. TAMBE: Objection to the form.
22	A. I don't know that they were both	22	Lack of foundation.
23	there for that meeting at the same time.	23	Q. Were you aware of whether Lehman's
24	Q. Okay. Independent of that	24	marks were being updated daily the week of
25	discussion, were you aware that the week of	25	September 15th?
	Page 116		Page 117
1			
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	A. Not aware.	2	38 and 43, did anyone raise any questions
	Q. As you sit here today, do you have any knowledge about whether Lehman's marks were	3	concerning that?
4	any knowledge about whether Lehman's marks were	1	A V - I 11 I 14 11 41 -
	•	4	A. Yes. I recall I can't recall the
5	being updated the week of September 15th on a	5	specifics, but I recall I recall framing in
5 6	being updated the week of September 15th on a daily basis?	5 6	specifics, but I recall I recall framing in my presentation, you know, a general concern
5 6 7	being updated the week of September 15th on a daily basis? A. Any knowledge I have knowledge	5 6 7	specifics, but I recall I recall framing in my presentation, you know, a general concern for not understanding the \$5 billion reduction
5 6 7 8	being updated the week of September 15th on a daily basis? A. Any knowledge I have knowledge not I recall the conversation with Alex Kirk	5 6 7 8	specifics, but I recall I recall framing in my presentation, you know, a general concern for not understanding the \$5 billion reduction and I recall either in that meeting that day or
5 6 7 8 9	being updated the week of September 15th on a daily basis? A. Any knowledge I have knowledge not I recall the conversation with Alex Kirk in that meeting that there was some, again,	5 6 7 8 9	specifics, but I recall I recall framing in my presentation, you know, a general concern for not understanding the \$5 billion reduction and I recall either in that meeting that day or the day before, the day after, somewhere around
5 6 7 8 9	being updated the week of September 15th on a daily basis? A. Any knowledge I have knowledge not I recall the conversation with Alex Kirk in that meeting that there was some, again, number of days where the marks hadn't been	5 6 7 8 9	specifics, but I recall I recall framing in my presentation, you know, a general concern for not understanding the \$5 billion reduction and I recall either in that meeting that day or the day before, the day after, somewhere around that period of time, a conversation with Mike
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1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	and believed that it wasn't a fair that it	2	Q. In general, any other general sense
3	wasn't a fair answer, but was struggling to	3	of the conversation from him?
1		1	
4 5	have complete understanding of what transpired.	4	A. Just very annoyed. Very annoyed by
5	Q. Do you have any knowledge of the	5	it all.
6	work he was doing on it?	6	Q. By the sale process or by the
7	MR. TECCE: Objection to form.	7	difference in valuation?
8	A. I don't have any specific knowledge	8	A. The difference.
9	of the work.	9	MR. TECCE: Objection to form.
10	Q. Do you have any general knowledge of	10	Q. Do you recall him saying anything
11	the work he was doing?	11	else
12	A. Just that he was doing work. I	12	A. No.
13	don't know anything specific to the work he was	13	Q in that conversation?
14	doing.	14	A. No.
15	Q. Did you understand that to be	15	Q. Now, you said in your presentation
16	attempting to value do an independent	16	you framed it as not having a full
17	valuation of those assets?	17	understanding of the \$5 billion difference; is
18	MR. TECCE: Objection to form.	18	that right?
19	A. I you know, I don't know the	19	A. Correct.
20	nature the detailed nature of what he was	20	Q. Do you recall what you said?
21	doing other than he was concerned about it and	21	A. Not verbatim.
22	trying to understand it.	22	Q. Would you please tell me as best you
23	Q. Do you recall anything else he said?	23	recall what you said.
24		24	
25	A. No, nothing nothing in	25	A. I probably well, I recall
2.5	particular, no.	25	generally talking about there being a dispute
	Page 120		Page 121
1		1	
1 2	Fogarty - Highly Confidential	1 2	Fogarty - Highly Confidential
2	Fogarty - Highly Confidential at the closing table about the value of the	1 2 3	Fogarty - Highly Confidential MR. TECCE: Objection to form.
2 3	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction	1 2 3 4	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall.
2 3 4	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in	4	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I
2 3 4 5	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against	4 5	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific
2 3 4 5 6	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against that 50 billion again, I keep having this	4	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific word I used.
2 3 4 5 6 7	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against that 50 billion again, I keep having this \$50 billion number in my head, but obviously I	4 5 6 7	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific word I used. Q. And approximately how many people
2 3 4 5 6 7 8	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against that 50 billion again, I keep having this \$50 billion number in my head, but obviously I see the 43 here, but that there was a	4 5 6 7 8	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific word I used. Q. And approximately how many people were at this presentation, just roughly?
2 3 4 5 6 7 8 9	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against that 50 billion again, I keep having this \$50 billion number in my head, but obviously I see the 43 here, but that there was a \$5 billion reduction in the asset value and	4 5 6 7 8 9	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific word I used. Q. And approximately how many people were at this presentation, just roughly? A. I don't know. Thirty people, maybe.
2 3 4 5 6 7 8 9	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against that 50 billion again, I keep having this \$50 billion number in my head, but obviously I see the 43 here, but that there was a \$5 billion reduction in the asset value and there was a lot of fighting about it at the	4 5 6 7 8 9	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific word I used. Q. And approximately how many people were at this presentation, just roughly? A. I don't know. Thirty people, maybe. Something like that.
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2 3 4 5 6 7 8 9 10 11 12	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against that 50 billion again, I keep having this \$50 billion number in my head, but obviously I see the 43 here, but that there was a \$5 billion reduction in the asset value and there was a lot of fighting about it at the closing table and that we didn't have an understanding a complete understanding of	4 5 6 7 8 9 10 11	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific word I used. Q. And approximately how many people were at this presentation, just roughly? A. I don't know. Thirty people, maybe. Something like that. Q. From the Creditors Committee, from Alvarez, from Weil Gotshal, from any other
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against that 50 billion again, I keep having this \$50 billion number in my head, but obviously I see the 43 here, but that there was a \$5 billion reduction in the asset value and there was a lot of fighting about it at the closing table and that we didn't have an understanding a complete understanding of what transpired. Q. A lot of fighting about it between whom?	4 5 6 7 8 9 10 11 12 13 14 15	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific word I used. Q. And approximately how many people were at this presentation, just roughly? A. I don't know. Thirty people, maybe. Something like that. Q. From the Creditors Committee, from Alvarez, from Weil Gotshal, from any other entities represented there? A. Creditors Committee, Houlihan, FTI, Alvarez, Weil.
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2 3 4 5 6 7 8 9 10 11 2 13 14 15 16 17	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against that 50 billion again, I keep having this \$50 billion number in my head, but obviously I see the 43 here, but that there was a \$5 billion reduction in the asset value and there was a lot of fighting about it at the closing table and that we didn't have an understanding a complete understanding of what transpired. Q. A lot of fighting about it between whom? A. Between management and the Lehman management and the Barclays representatives.	4 5 6 7 8 9 10 11 12 13 14 15 16 17	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific word I used. Q. And approximately how many people were at this presentation, just roughly? A. I don't know. Thirty people, maybe. Something like that. Q. From the Creditors Committee, from Alvarez, from Weil Gotshal, from any other entities represented there? A. Creditors Committee, Houlihan, FTI, Alvarez, Weil. Q. Anyone from the trustee or their representative, Deloitte?
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2 3 4 5 6 7 8 9 10 1 1 2 1 3 1 4 1 5 6 1 7 1 8 9 2 0	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against that 50 billion again, I keep having this \$50 billion number in my head, but obviously I see the 43 here, but that there was a \$5 billion reduction in the asset value and there was a lot of fighting about it at the closing table and that we didn't have an understanding a complete understanding of what transpired. Q. A lot of fighting about it between whom? A. Between management and the Lehman management and the Barclays representatives. Q. Do you know if you used the word any synonyms for "reduction" in your presentation?	4 5 6 7 8 9 0 11 12 13 14 15 16 7 18 9 19 19 19 19 19 19 19 19 19 19 19 19 1	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific word I used. Q. And approximately how many people were at this presentation, just roughly? A. I don't know. Thirty people, maybe. Something like that. Q. From the Creditors Committee, from Alvarez, from Weil Gotshal, from any other entities represented there? A. Creditors Committee, Houlihan, FTI, Alvarez, Weil. Q. Anyone from the trustee or their representative, Deloitte? A. No. That wouldn't have been typical. No. Q. Where was this presentation held?
2 3 4 5 6 7 8 9 10 11 21 3 14 15 6 17 18 9 20 21	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against that 50 billion again, I keep having this \$50 billion number in my head, but obviously I see the 43 here, but that there was a \$5 billion reduction in the asset value and there was a lot of fighting about it at the closing table and that we didn't have an understanding a complete understanding of what transpired. Q. A lot of fighting about it between whom? A. Between management and the Lehman management and the Barclays representatives. Q. Do you know if you used the word any synonyms for "reduction" in your	4 5 6 7 8 9 0 1 1 1 2 1 3 4 1 5 6 7 8 9 0 2 1 2 1 2 1 2 1 2 1 2 1 2 1 2 1 2 1 2	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific word I used. Q. And approximately how many people were at this presentation, just roughly? A. I don't know. Thirty people, maybe. Something like that. Q. From the Creditors Committee, from Alvarez, from Weil Gotshal, from any other entities represented there? A. Creditors Committee, Houlihan, FTI, Alvarez, Weil. Q. Anyone from the trustee or their representative, Deloitte? A. No. That wouldn't have been typical. No. Q. Where was this presentation held? A. We it was either at the Weil
2 3 4 5 6 7 8 9 10 11 2 13 14 15 6 17 18 9 2 1 2 1 2 1 2 1 2 2 2 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against that 50 billion again, I keep having this \$50 billion number in my head, but obviously I see the 43 here, but that there was a \$5 billion reduction in the asset value and there was a lot of fighting about it at the closing table and that we didn't have an understanding a complete understanding of what transpired. Q. A lot of fighting about it between whom? A. Between management and the Lehman management and the Barclays representatives. Q. Do you know if you used the word any synonyms for "reduction" in your presentation? MR. TAMBE: Object to the form of the question.	4 5 6 7 8 9 0 1 1 1 2 1 3 1 4 1 5 6 7 1 8 9 0 1 2 1 2 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific word I used. Q. And approximately how many people were at this presentation, just roughly? A. I don't know. Thirty people, maybe. Something like that. Q. From the Creditors Committee, from Alvarez, from Weil Gotshal, from any other entities represented there? A. Creditors Committee, Houlihan, FTI, Alvarez, Weil. Q. Anyone from the trustee or their representative, Deloitte? A. No. That wouldn't have been typical. No. Q. Where was this presentation held?
2 3 4 5 6 7 8 9 10 11 2 13 14 15 6 17 18 9 20 12 22 23	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against that 50 billion again, I keep having this \$50 billion number in my head, but obviously I see the 43 here, but that there was a \$5 billion reduction in the asset value and there was a lot of fighting about it at the closing table and that we didn't have an understanding a complete understanding of what transpired. Q. A lot of fighting about it between whom? A. Between management and the Lehman management and the Barclays representatives. Q. Do you know if you used the word any synonyms for "reduction" in your presentation? MR. TAMBE: Object to the form of	4 5 6 7 8 9 0 1 1 1 2 1 3 4 1 5 6 7 8 9 0 2 1 2 1 2 1 2 1 2 1 2 1 2 1 2 1 2 1 2	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific word I used. Q. And approximately how many people were at this presentation, just roughly? A. I don't know. Thirty people, maybe. Something like that. Q. From the Creditors Committee, from Alvarez, from Weil Gotshal, from any other entities represented there? A. Creditors Committee, Houlihan, FTI, Alvarez, Weil. Q. Anyone from the trustee or their representative, Deloitte? A. No. That wouldn't have been typical. No. Q. Where was this presentation held? A. We it was either at the Weil
2 3 4 5 6 7 8 9 10 1 1 2 3 1 4 1 5 6 7 8 9 2 1 2 2 3 2 4	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against that 50 billion again, I keep having this \$50 billion number in my head, but obviously I see the 43 here, but that there was a \$5 billion reduction in the asset value and there was a lot of fighting about it at the closing table and that we didn't have an understanding a complete understanding of what transpired. Q. A lot of fighting about it between whom? A. Between management and the Lehman management and the Barclays representatives. Q. Do you know if you used the word any synonyms for "reduction" in your presentation? MR. TAMBE: Object to the form of the question.	4 5 6 7 8 9 0 1 1 1 2 1 3 1 4 1 5 6 7 1 8 9 0 1 2 1 2 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific word I used. Q. And approximately how many people were at this presentation, just roughly? A. I don't know. Thirty people, maybe. Something like that. Q. From the Creditors Committee, from Alvarez, from Weil Gotshal, from any other entities represented there? A. Creditors Committee, Houlihan, FTI, Alvarez, Weil. Q. Anyone from the trustee or their representative, Deloitte? A. No. That wouldn't have been typical. No. Q. Where was this presentation held? A. We it was either at the Weil offices or Milbank's offices. I didn't
234567890112314516789021223	Fogarty - Highly Confidential at the closing table about the value of the repo assets being conveyed in the transaction and that there was a \$5 billion reduction in the what do you call it the against that 50 billion again, I keep having this \$50 billion number in my head, but obviously I see the 43 here, but that there was a \$5 billion reduction in the asset value and there was a lot of fighting about it at the closing table and that we didn't have an understanding a complete understanding of what transpired. Q. A lot of fighting about it between whom? A. Between management and the Lehman management and the Barclays representatives. Q. Do you know if you used the word any synonyms for "reduction" in your presentation? MR. TAMBE: Object to the form of the question. A. I don't recall.	4 5 6 7 8 9 0 1 1 1 1 1 1 1 1 1 1 1 1 2 1 2 2 2 3 2 3	Fogarty - Highly Confidential MR. TECCE: Objection to form. A. That's possible. I can't recall. Haircut is possible. That would be a word I might have used. I can't recall the specific word I used. Q. And approximately how many people were at this presentation, just roughly? A. I don't know. Thirty people, maybe. Something like that. Q. From the Creditors Committee, from Alvarez, from Weil Gotshal, from any other entities represented there? A. Creditors Committee, Houlihan, FTI, Alvarez, Weil. Q. Anyone from the trustee or their representative, Deloitte? A. No. That wouldn't have been typical. No. Q. Where was this presentation held? A. We it was either at the Weil offices or Milbank's offices. I didn't mention, of course, Milbank would there be too.

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1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	difference?	2	last part. You are speculating that they
3	MR. TECCE: Objection to form.	3	understood that you were continuing to try to
4	MR. TAMBE: Object to the form.	4	understand?
5	A. Possible. I can't recall	5	A. Well, because that's
6	specifically who might have at least	6	MR. TECCE: Objection.
7	possible some of the creditor I can't recall	7	MR. TAMBE: Object to the form.
8	exactly who might have had questions there. I	8	A. That's what we would have said at
9	don't	9	the when we were talking about it with the
10		10	Creditors Committee, that we were continuing to
11	Fazio did after this point in time to follow up	11	try to understand the transaction.
12	on his concern?	12	Q. Do you recall saying that about this
13	MR. TECCE: Objection to form.	13	point?
	MR. TAMBE: Lack of foundation.	14	A. Yes.
14 15	A. In general there was pressing for	15	Q. And did you what did you do to
16		16	further try to understand?
17		17	A. It's the same process I referred to
18	· · · · · · · · · · · · · · · · · · ·	18	earlier, that and the process moved over
19		19	towards the finance team under Dave Coles to
20	Alvarez for additional information about this	20	continue the effort with Bill Fox to try to
21	issue?	2.1	continue to understand this transaction.
22	A. No. No. Other than a recognition	21 22	Q. The 43 billion or 50 billion, you
23	that we were working on continuing to work	23	had a CUSIP list, so you knew which assets were
24	on trying to understand understand.	24	at issue; correct?
25	Q. I'm sorry, I didn't understand the	25	MR. TAMBE: Objection to the form of
			·
	Page 124		Page 125
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	the question.	2	A. Rephrase that one. Ultimately
3	A. Correct, we had a CUSIP list.	3	Q. Ultimately the a negotiated
4	Q. Did you make any efforts to	4	valuation of a lower amount was reached?
5	independently value those at the time?	5	MR. TAMBE: Objection.
6	A. No.	6	A. That's my understanding.
7	Q. Why not?	7	MR. TAMBE: Objection to the form of
8	A. Not my skill set. I'm not a	8	the question.
9	valuation person.	9	Q. And if there was a question about
10	Q. Do you know if someone else at	10	whether the updated valuation reached by the
11	Alvarez did?	11	two sides was reasonable or not and you had a
12		12	list of securities, "you" being Alvarez &
13		13	Marsal, why not just independently value them
14		14	and see if they are worth that amount?
15		15	MR. TAMBE: Objection to the form of
16 17		16	the question. Argumentative. Lack of
17	Q. So when repo collateral goes over to	17	foundation.
18		18	A. We continued to through the teams
19		19	ask questions of Barclays and there came a
20	at it and says "we don't think it's worth this,	20	point in time where we weren't the
21	we think it's worth less," and ultimately the	21	response they were not being responsive, I
22	Lehman executives agree that it's valued less,	22	think, is what really happened in that process.
23 24	is that your understanding?	23	Q. Not being responsive. I mean, did
		24	you make any independent effort to value those
25	the question. Lack of foundation.	<mark>25</mark>	securities?

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1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	MR. TAMBE: Objection to the form of	2	MR. TAMBE: Isn't that like four
3	the question.	3	times you have asked that question now? He
4	A. No.	4	has answered it.
5	MR. TAMBE: Lack of foundation.	5	A. Give me that question one more time.
6	Q. Who was being not responsive? Is	6	Q. Sure. You had a list of securities,
7	there some particular information that was	7	you had the CUSIPs, and you didn't make any
	asked of an individual at Barclays that the	8	·
8			effort to value those assets independently;
	information wasn't provided concerning the	9	correct?
10	valuation of these assets?	10	MR. TAMBE: Objection. Asked and
11	A. Yes. There was a number of requests	11	answered. Lack of foundation.
12	to spend time with Barclays understanding the	12	A. No.
13	transaction and understanding what transpired	13	Q. Is that correct?
14	and we were not receiving information.	14	MR. TAMBE: Objection.
15	Q. Can you identify a specific request	15	Q. When you say "no," are you saying
16	to a specific individual?	16	no, you didn't make that effort, or you
17	MR. TAMBE: Objection. Asked and	17	MR. TAMBE: Objection.
18	answered.	18	A. I did not personally make that
19	A. I can't.	19	effort.
20	Q. But you had the list of securities,	20	MR. TAMBE: Objection, form.
21	you had the CUSIPs, and you didn't make any	21	Objection, foundation.
22	effort to value those independently?	22	Q. Did anyone at Alvarez?
23	MR. TAMBE: Objection, asked and	23	A. I don't recall that anyone did.
24	answered. Objection, lack of foundation.	24	THE VIDEOGRAPHER: The time is
25	A. Sorry.	25	12:36. We are going off the record.
2.5	A. Sony.	2.5	12.30. We are going off the record.
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1 2	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
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2 3 4 5 6 7 8 9 0 1 1 2 1 3 1 4 1 5 6 7 1 8 9 2 1 2 2 3 2 3 3 4 5 6 7 8 9 0 1 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 2 2 3 5 6 7 8 9 0 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential (Recess was taken from 12:36 to 12:52.) THE VIDEOGRAPHER: The time is 12:52. We are back on the record. BY MR. THOMAS: Q. Mr. Fogarty, did you ever study the value of the derivatives or related collateral of those transfers as part of the transaction? MR. TAMBE: Objection to the form of the question. A. No. Q. Have you ever reviewed the original APA? A. Have I parts of it I have flipped through. I can't say I have read the whole APA. Q. Have you ever made any effort to analyze what assets were included as purchased assets as part of the original APA? A. Yes. Q. What was the purpose of that exercise?	1 2 3 4 5 6 7 8 9 0 11 12 13 14 15 16 17 18 19 22 22 23	Fogarty - Highly Confidential to manage. That was the purpose of it. Q. And when I say "original APA," let me go ahead and show you what I am referring to. It's previously marked as Exhibit 1 dated September 16th. (Document review.) Q. Do you have a general understanding that this is the initial agreement between Lehman and Barclays but that it had to be modified during the course of the week because of a bunch of changes in Lehman's business and assets? A. I generally understand yes. Q. And so this, if I refer to the original APA, will you understand that I am referring to just this document dated September 16th and not the purchase agreement which includes the revisions and the Clarification Letter that were eventually executed and closed? A. I can't say I understand that there were those multiple versions. I can't say I

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	Page 130		Page 131
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
1 2	understand when you went back and looked at	2	were part of the purchased assets contained in
3	assets that were conveyed, were you looking at	3	Exhibit 1?
4	this original document or this document as	4	MR. TAMBE: Object to the form.
5	modified by the Clarification Letter that we	5	Q. And you are welcome to flip to
6	looked at earlier which made revisions to this	6	A. I had understood not based on
7	document including changing the definition of	7	reading the document, but based on
8	purchased assets?	8	conversations with the lawyers that the
9	A. I actually recall doing work with	9	unencumbered assets were part of the
10	trying to have an understanding of the assets	10	transaction.
11	purchased and excluded in this document or in a	11	Q. When you say "part of the
12	document like this and actually not	12	transaction," they also were a part of the
13	understanding initially that there was a	13	original purchase agreement before it was
14	clarification agreement, and then I don't	14	modified by the later letter agreement?
15	recall going back to sort of this in concert	15	MR. TAMBE: Objection to the form of
16	with that Clarification Letter. I don't recall	16	
17	doing that step.	17	the question. A. I can't recall that I cared whether
18			
19	Q. Did you ever have an opinion as to whether or understanding as to whether the	18	it was in the original or in the clarifi I can't recall caring about that.
20		20	
21	unencumbered assets were part of the purchased	21	Q. Okay. Same question for the 15C3
	assets identified in Exhibit 1?	22	assets. Do you recall if you ever had an
22 23	A. I'm sorry?	23	opinion or understanding as to whether those
	Q. Did you ever have an opinion or		assets were not only included in the ultimate
24	understanding as to whether the unencumbered	24	purchase transaction, but in the original APA?
25	clearance box assets we discussed previously	25	A. I can't recall understanding whether
	Page 132		Page 133
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential Related to the sale transaction
1 2 3	they were if 15C3 is one in the same as	2	Q. Related to the sale transaction.
3	they were if 15C3 is one in the same as those repo assets, I can't remember all the	2 3	Q. Related to the sale transaction.A. Not this sale transaction.
3 4	they were if 15C3 is one in the same as those repo assets, I can't remember all the codes here, I can't recall whether they were	2 3 4	Q. Related to the sale transaction.A. Not this sale transaction.Q. So not the September 16th, 17th or
3 4 5	they were if 15C3 is one in the same as those repo assets, I can't remember all the codes here, I can't recall whether they were whether it was in the original or in the	2 3 4 5	Q. Related to the sale transaction.A. Not this sale transaction.Q. So not the September 16th, 17th or 19th sale hearings?
3 4 5 6	they were if 15C3 is one in the same as those repo assets, I can't remember all the codes here, I can't recall whether they were whether it was in the original or in the clarifi I can't remember sort of worrying	2 3 4	 Q. Related to the sale transaction. A. Not this sale transaction. Q. So not the September 16th, 17th or 19th sale hearings? A. No.
3 4 5 6 7	they were if 15C3 is one in the same as those repo assets, I can't remember all the codes here, I can't recall whether they were whether it was in the original or in the clarifi I can't remember sort of worrying about that or thinking that through.	2 3 4 5 6 7	 Q. Related to the sale transaction. A. Not this sale transaction. Q. So not the September 16th, 17th or 19th sale hearings? A. No. Q. Did you ever read the transcripts of
3 4 5 6 7 8	they were if 15C3 is one in the same as those repo assets, I can't remember all the codes here, I can't recall whether they were whether it was in the original or in the clarifi I can't remember sort of worrying about that or thinking that through. Q. And if the 15C3 is the 769 million,	2 3 4 5 6 7 8	 Q. Related to the sale transaction. A. Not this sale transaction. Q. So not the September 16th, 17th or 19th sale hearings? A. No. Q. Did you ever read the transcripts of any of those hearings?
3 4 5 6 7 8 9	they were if 15C3 is one in the same as those repo assets, I can't remember all the codes here, I can't recall whether they were whether it was in the original or in the clarifi I can't remember sort of worrying about that or thinking that through. Q. And if the 15C3 is the 769 million, does that	2 3 4 5 6 7 8 9	 Q. Related to the sale transaction. A. Not this sale transaction. Q. So not the September 16th, 17th or 19th sale hearings? A. No. Q. Did you ever read the transcripts of any of those hearings? A. No.
3 4 5 6 7 8 9 10	they were if 15C3 is one in the same as those repo assets, I can't remember all the codes here, I can't recall whether they were whether it was in the original or in the clarifi I can't remember sort of worrying about that or thinking that through. Q. And if the 15C3 is the 769 million, does that A. Oh, then that's not I don't	2 3 4 5 6 7 8 9	 Q. Related to the sale transaction. A. Not this sale transaction. Q. So not the September 16th, 17th or 19th sale hearings? A. No. Q. Did you ever read the transcripts of any of those hearings? A. No. Q. Have you spoken with anyone other
3 4 5 6 7 8 9 10	they were if 15C3 is one in the same as those repo assets, I can't remember all the codes here, I can't recall whether they were whether it was in the original or in the clarifi I can't remember sort of worrying about that or thinking that through. Q. And if the 15C3 is the 769 million, does that A. Oh, then that's not I don't know I don't know the specificity of that	2 3 4 5 6 7 8 9 10 11	 Q. Related to the sale transaction. A. Not this sale transaction. Q. So not the September 16th, 17th or 19th sale hearings? A. No. Q. Did you ever read the transcripts of any of those hearings? A. No. Q. Have you spoken with anyone other than your lawyers about this case?
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Page 134 Page 135 1 Fogarty - Highly Confidential Fogarty - Highly Confidential 1 2 2 MR. THOMAS: He can designate it not -- other than that note and that agreement, 3 3 whatever that has in it. confidential. THE WITNESS: Okay. 4 MR. THOMAS: Let me take a short 4 5 MR. TAMBE: If you don't want to go 5 break. I may be done. 6 into the numbers, you don't have to go into 6 THE VIDEOGRAPHER: The time is 1:02. 7 the numbers. You can just describe 7 We are going off the record. 8 generally the relationship and take it one 8 (Recess was taken from 1:02 to 9 9 question at a time. 0 10 THE WITNESS: Okay. THE VIDEOGRAPHER: The time is 1:03. 1 A. I have a note that they need to pay 11 We are back on the record. 12 2 me out on over time. BY MR. THOMAS: Q. When did that note arise? 13 Q. Did you ever do any analysis of or 4 14 effort to understand how certain potential A. December. 5 Q. What was the reason for this 15 exposures, potential liabilities, relating to 6 16 contracts that Barclays might assume, how those arrangement? 17 7 A. I was a shareholder of Alvarez & estimates of potential exposure were 8. 18 calculated? Marsal prior to that. 19 19 Q. So they are still paying you out MR. TAMBE: I will only caution the quarterly or monthly on this note? 20 20 witness to the extent he did any work in 21 that regard at the direction of in-house A. Annually. 22 22 Q. Do you have any other contractual counsel or other outside counsel, that's work product and you should not be 23 relationship with them other than the fact that 23 24 they are paying you money? 24 testifying about that. 25 A. Not sitting here today. Well, 25 MR. THOMAS: You can identify that Page 136 Page 137 1 Fogarty - Highly Confidential 1 Fogarty - Highly Confidential being bandied around. 2 you did it. Then we won't go into any of 2 3 the substance. 3 Q. The number for severance and bonus, 4 THE WITNESS: Okay. 4 do you have any knowledge as to how those estimates were calculated prior to closing? 5 5 A. We did -- we did work -- my team 6 did -- Phil Gordon had counsel working with him 6 A. I had no knowledge of how that was 7 to work on those printer, you know, leases and 7 calculated. 8 all these various things that were in that 8 Q. Okay. You are just aware that there 9 process where Barclays would either take those 9 was some estimate of potential liability for 10 obligations, and if they didn't, then we had to 10 severance and bonus, but you are not aware of 11 figure out whether on behalf of the estate we 11 how -- who calculated it or how? 12 would assume or reject those various contracts, 12 A. Correct. 13 13 so there was a process under way under Bill and MR. TAMBE: Objection to form. 14 that team to review that. 14 Q. And do you have any knowledge as 15 15 Q. Did you know that the week of the to --16 16 sale hearing there were certain estimates made MR. THOMAS: Let me go ahead and 17 17 as to the potential exposure, meaning potential mark one more document. We will mark this 18 amount of liability that could be assumed under 18 as Exhibit 566-B. This doesn't have Bates 19 those contracts if Barclays elected to assume 19 stamps, but I will try to find the 20 all the contracts? 20 production copy. 21 2.1 MR. TAMBE: Objection to form. (Exhibit 566-B (subsequently withdrawn), e-mail dated September 19. 22 A. I was aware that there was numbers 2 bandied around regarding accruals for severance 23 23 2008, marked for identification.) and bonus and other -- really those two pieces. Q. This is an e-mail from Martin Kelly 24 24 Those are the pieces I was aware of numbers 25 25 on which you are copied. Do you recognize the

	- 100		
	Page 138		Page 139
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	document?	2	Q. And I believe you indicated you
3	A. I recognize the document generally,	3	recognize the attachment to the e-mail?
4	yes.	4	A. Yes, the general form of the thing I
5	Q. Okay. And do you recall receiving	5	recognize.
6	this document at or about the time of September	6	Q. Okay. And can you describe
7	19th, 2008, or September 18th?	7	generally what the attachment is?
8	MR. TAMBE: I think you have asked	8	A. My partner, David Coles, was just
9	him about this document.	9	keeping me copied on his attempt to track the
10	MR. THOMAS: I think you are right.	10	accounting of what we had, you know, pro forma
11	MR. TAMBE: I just didn't know if	11	for the transaction.
12	there was a deeper plan here, but probably	12	Q. And how would you describe the
13	not.	13	attachment itself?
14	MR. THOMAS: This has all been a	14	A. I'll be honest, I never studied the
15	test. Let me just what I am going to	15	attachment. Well, I'm supposed to be honest
16	do, I do have another follow-up question	16	all day, but it's a figure of speech.
17	about this document, but I am going to go	17	Q. That wasn't the first time.
18	back to the exhibit.	18	A. Right, that wasn't the first time,
19	MR. TAMBE: 561-B.	19	-
20	MR. THOMAS: This is why so we	20	yes.
21	are striking 566-B, because that's been	21	Q. And this is a document you would have the attachment you would have received
22		22	*
23	previously marked as 561-B.	23	on September 18th of 2008; is that right?
24 24	Q. Mr. Fogarty, do you recognize		A. Say that again. This was a
25	Exhibit 561-B that we discussed previously? A. Yes.	24 25	Q. This is a document, the attachment
23	A. Yes.	E 2	that you received on September 18th, 2008?
		ì	
	Page 140		Page 141
1			
1 2	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	Fogarty - Highly Confidential A. I'm sure I did.	1 2	Fogarty - Highly Confidential Q. Were you aware that week that there
2	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first	1 2 3	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment?
2 3 4	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line	1 2 3 4	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of
2 3 4 5	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says	1 2 3 4 5	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question.
2 3 4 5 6	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"?	1 2 3 4	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No.
2 3 4 5 6 7	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"? A. I'm on the assets page. You are on	1 2 3 4 5 6 7	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No. Q. Do you know if your colleagues who
2 3 4 5 6 7 8	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"? A. I'm on the assets page. You are on the	1 2 3 4 5 6 7 8	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No. Q. Do you know if your colleagues who received this document were aware of that?
2 3 4 5 6 7 8 9	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"? A. I'm on the assets page. You are on the Q. Under Liabilities.	1 2 3 4 5 6 7 8 9	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No. Q. Do you know if your colleagues who received this document were aware of that? A. I do not know.
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2 3 4 5 6 7 8 9 10 11 12	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"? A. I'm on the assets page. You are on the Q. Under Liabilities. A. What line am I on? Q. You are looking for payables under Liabilities.	1 2 3 4 5 6 7 8 9 10 11 12	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No. Q. Do you know if your colleagues who received this document were aware of that? A. I do not know. Q. Do you recall any discussions about the transaction adjustment? A. No.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"? A. I'm on the assets page. You are on the Q. Under Liabilities. A. What line am I on? Q. You are looking for payables under Liabilities. A. Oh, there. Okay. Q. Okay. And do you see a line entitled Bonus Payable and a line entitled Cure	1 2 3 4 5 6 7 8 9 0 11 12 13 14 15	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No. Q. Do you know if your colleagues who received this document were aware of that? A. I do not know. Q. Do you recall any discussions about the transaction adjustment? A. No. Q. Do you have any understanding for why that transaction adjustment was made for either one of those two lines?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"? A. I'm on the assets page. You are on the Q. Under Liabilities. A. What line am I on? Q. You are looking for payables under Liabilities. A. Oh, there. Okay. Q. Okay. And do you see a line entitled Bonus Payable and a line entitled Cure Payments, Accounts Payable?	1 2 3 4 5 6 7 8 9 0 1 1 2 3 4 5 6 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No. Q. Do you know if your colleagues who received this document were aware of that? A. I do not know. Q. Do you recall any discussions about the transaction adjustment? A. No. Q. Do you have any understanding for why that transaction adjustment was made for either one of those two lines? MR. TAMBE: Objection to the form of
2 3 4 5 6 7 8 9 0 11 12 13 14 15 16 17	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"? A. I'm on the assets page. You are on the Q. Under Liabilities. A. What line am I on? Q. You are looking for payables under Liabilities. A. Oh, there. Okay. Q. Okay. And do you see a line entitled Bonus Payable and a line entitled Cure Payments, Accounts Payable? A. I do.	1 2 3 4 5 6 7 8 9 0 1 1 2 3 4 1 5 6 7 6 7	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No. Q. Do you know if your colleagues who received this document were aware of that? A. I do not know. Q. Do you recall any discussions about the transaction adjustment? A. No. Q. Do you have any understanding for why that transaction adjustment was made for either one of those two lines? MR. TAMBE: Objection to the form of the question.
2 3 4 5 6 7 8 9 1 1 1 2 1 3 1 4 1 1 1 1 1 1 1 1 1 1 1 1 1	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"? A. I'm on the assets page. You are on the Q. Under Liabilities. A. What line am I on? Q. You are looking for payables under Liabilities. A. Oh, there. Okay. Q. Okay. And do you see a line entitled Bonus Payable and a line entitled Cure Payments, Accounts Payable? A. I do. Q. Okay. And do you see reading	1 2 3 4 5 6 7 8 9 0 1 1 2 3 4 1 5 6 7 8 1 7 8 1 8 1 1 1 1 1 1 1 1 1 1 1 1 1	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No. Q. Do you know if your colleagues who received this document were aware of that? A. I do not know. Q. Do you recall any discussions about the transaction adjustment? A. No. Q. Do you have any understanding for why that transaction adjustment was made for either one of those two lines? MR. TAMBE: Objection to the form of the question. A. No.
2 3 4 5 6 7 8 9 0 1 1 2 3 1 4 1 5 6 1 7 1 8 9 1 1 2 3 1 4 1 5 6 1 7 1 8 9 1 9 1 9 1 9 1 9 1 9 1 9 1 9 1 9 1	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"? A. I'm on the assets page. You are on the Q. Under Liabilities. A. What line am I on? Q. You are looking for payables under Liabilities. A. Oh, there. Okay. Q. Okay. And do you see a line entitled Bonus Payable and a line entitled Cure Payments, Accounts Payable? A. I do. Q. Okay. And do you see reading across, do you see the column Transaction	1234567890123456789	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No. Q. Do you know if your colleagues who received this document were aware of that? A. I do not know. Q. Do you recall any discussions about the transaction adjustment? A. No. Q. Do you have any understanding for why that transaction adjustment was made for either one of those two lines? MR. TAMBE: Objection to the form of the question. A. No. Q. What is your understanding of what a
23456789011234567890	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"? A. I'm on the assets page. You are on the Q. Under Liabilities. A. What line am I on? Q. You are looking for payables under Liabilities. A. Oh, there. Okay. Q. Okay. And do you see a line entitled Bonus Payable and a line entitled Cure Payments, Accounts Payable? A. I do. Q. Okay. And do you see reading across, do you see the column Transaction Adjustments?	123456789011234567890	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No. Q. Do you know if your colleagues who received this document were aware of that? A. I do not know. Q. Do you recall any discussions about the transaction adjustment? A. No. Q. Do you have any understanding for why that transaction adjustment was made for either one of those two lines? MR. TAMBE: Objection to the form of the question. A. No. Q. What is your understanding of what a transaction adjustment is?
234567890112314567890121	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"? A. I'm on the assets page. You are on the Q. Under Liabilities. A. What line am I on? Q. You are looking for payables under Liabilities. A. Oh, there. Okay. Q. Okay. And do you see a line entitled Bonus Payable and a line entitled Cure Payments, Accounts Payable? A. I do. Q. Okay. And do you see reading across, do you see the column Transaction Adjustments? A. I do.	1 2 3 4 5 6 7 8 9 0 1 1 2 3 1 4 5 6 7 8 9 0 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No. Q. Do you know if your colleagues who received this document were aware of that? A. I do not know. Q. Do you recall any discussions about the transaction adjustment? A. No. Q. Do you have any understanding for why that transaction adjustment was made for either one of those two lines? MR. TAMBE: Objection to the form of the question. A. No. Q. What is your understanding of what a transaction adjustment is? A. An adjustment made in a transaction.
234567890112314567890122	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"? A. I'm on the assets page. You are on the Q. Under Liabilities. A. What line am I on? Q. You are looking for payables under Liabilities. A. Oh, there. Okay. Q. Okay. And do you see a line entitled Bonus Payable and a line entitled Cure Payments, Accounts Payable? A. I do. Q. Okay. And do you see reading across, do you see the column Transaction Adjustments? A. I do. Q. Do you see that there was a	1 2 3 4 5 6 7 8 9 0 1 1 2 1 2 1 2 1 2 2 2 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No. Q. Do you know if your colleagues who received this document were aware of that? A. I do not know. Q. Do you recall any discussions about the transaction adjustment? A. No. Q. Do you have any understanding for why that transaction adjustment was made for either one of those two lines? MR. TAMBE: Objection to the form of the question. A. No. Q. What is your understanding of what a transaction adjustment is? A. An adjustment made in a transaction. Q. Do you have a more specific
2345678901123145678901223	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"? A. I'm on the assets page. You are on the Q. Under Liabilities. A. What line am I on? Q. You are looking for payables under Liabilities. A. Oh, there. Okay. Q. Okay. And do you see a line entitled Bonus Payable and a line entitled Cure Payments, Accounts Payable? A. I do. Q. Okay. And do you see reading across, do you see the column Transaction Adjustments? A. I do. Q. Do you see that there was a transaction adjustment to both the bonus	1 2 3 4 5 6 7 8 9 0 1 1 2 1 3 1 4 5 1 6 7 1 2 1 2 2 2 3 2 3 2 3 2 3 2 3 2 3 2 3 2	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No. Q. Do you know if your colleagues who received this document were aware of that? A. I do not know. Q. Do you recall any discussions about the transaction adjustment? A. No. Q. Do you have any understanding for why that transaction adjustment was made for either one of those two lines? MR. TAMBE: Objection to the form of the question. A. No. Q. What is your understanding of what a transaction adjustment is? A. An adjustment made in a transaction. Q. Do you have a more specific understanding than that, the purpose of a
234567890112314567890122 22222	Fogarty - Highly Confidential A. I'm sure I did. Q. And if you would look at the first page of the attachment, do you see the line about a third of the way down that says "payables"? A. I'm on the assets page. You are on the Q. Under Liabilities. A. What line am I on? Q. You are looking for payables under Liabilities. A. Oh, there. Okay. Q. Okay. And do you see a line entitled Bonus Payable and a line entitled Cure Payments, Accounts Payable? A. I do. Q. Okay. And do you see reading across, do you see the column Transaction Adjustments? A. I do. Q. Do you see that there was a transaction adjustment to both the bonus	1 2 3 4 5 6 7 8 9 0 1 1 2 1 2 1 2 1 2 2 2 2 2 2 2 2 2 2 2	Fogarty - Highly Confidential Q. Were you aware that week that there was a transaction adjustment? MR. TAMBE: Objection to the form of the question. A. No. Q. Do you know if your colleagues who received this document were aware of that? A. I do not know. Q. Do you recall any discussions about the transaction adjustment? A. No. Q. Do you have any understanding for why that transaction adjustment was made for either one of those two lines? MR. TAMBE: Objection to the form of the question. A. No. Q. What is your understanding of what a transaction adjustment is? A. An adjustment made in a transaction. Q. Do you have a more specific

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	Page 142		Page 143
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	I suppose.	2	You can answer.
3	Q. Do you know if do you know if	3	A. I'm not aware of people specifically
4	Alvarez anyone at Alvarez discussed or	4	trying to understand transaction adjustments.
5	investigated why these transaction adjustments	5	Q. So they may or may not have, but you
6	were made?	6	are not aware either way?
7	MR. TAMBE: Objection to form.	7	A. I am aware of people trying to
8	A. No.	8	understand 2 billion and 2 billion 250, but I
9	Q. You don't know one way or another	9	am not aware of people trying to understand
10	whether somebody else at Alvarez was following	10	transaction adjustments.
11	up and asking questions about the transaction	11	Q. Okay. Well, those numbers come from
12	adjustment?	12	a transaction adjustment; correct?
13	MR. TAMBE: When?	13	MR. TAMBE: Objection to the form of
14	MR. THOMAS: At any time.	14	
1			the question.
15 16	MR. TAMBE: Objection to the form,	15 16	A. I don't know. I see the thing that says "transaction adjustments" like you do, but
17	and I caution him not to disclose any		
18	privilege or work product that he may be aware of.	17 18	I don't know anything about that.
			Q. So when you got this document, you
19	A. Give me your question again.	19	don't recall following up on the nature of this
20	Q. Sure. Do you know if anyone else at	20	transaction adjustment?
21	Alvarez investigated or looked into why there	21 22	A. I did not study this document, no.
22	was a transaction adjustment being made to		Q. Was someone was this someone
23	these two items?	23	was this issue and document more in Mr. Coles'
24	MR. TAMBE: Objection to form. Same	24	bailiwick?
25	instruction as before.	25	A. Yes.
	Page 144		Page 145
1	Fogarty - Highly Confidential	1	Fogarty - Highly Confidential
2	Q. Okay. Did you have a general	2	Just going back, you mentioned a
3	understanding that if Barclays elected at its	3	conversation with Michael Fazio of Houlihan.
4	discretion not to assume any of the contracts,	4	Correct? Do you remember when that
5	that the liability for cure would be zero?	5	conversation took place?
6	MR. TAMBE: Objection to the form of	6	A. I remember it was I don't recall.
7	the question. Lack of foundation.	7	It was around that time frame of that
8	A. I'm sorry, one more time.	8	presentation to the Creditors Committee. I
9	Q. Did you have an understanding that	9	just can't remember
10	it was Barclays' discretion as to what	10	Q. The October 2008 presentation?
11	contracts that it elected to assume or reject?		A. Correct.
12	A. I actually thought about that in the	12	(Continued on next page to include
13	context of copier leases and those kinds of	13	jurat.)
14	things. I don't know that I was ever thinking	$\frac{1}{4}$	J/
15	about it in the context of severance and	15	
16	bonuses.	Ī6	
17	MR. THOMAS: Okay, thank you. I	$\frac{1}{1}$	
18	have nothing further.	18	
		19	
ш9	MR. TECCE: I have one question	エン	
19 20	MR. TECCE: I have one question, actually.		
20	actually.	20	
20 21	actually. EXAMINATION BY	20 21	
20 21 22	actually. EXAMINATION BY MR. TECCE:	20 21 22	
20 21 22 23	actually. EXAMINATION BY MR. TECCE: Q. Mr. Fogarty, my name is James Tecce.	20 21 22 23	
20 21 22	actually. EXAMINATION BY MR. TECCE:	20 21 22	

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		Page 1
1		
2	UNITED STATES BANKRUPTCY COURT	
3	SOUTHERN DISTRICT OF NEW YORK	
4	X	
5	IN RE:	
6	Chapter 11	
7	LEHMAN BROTHERS Case No. 08-13555(JMP)	
8	HOLDINGS, INC., et al.,	
9		
10	Debtors.	
11	X	
12		
13		
14		
15	HIGHLY CONFIDENTIAL DEPOSITION OF	
16	ANSON FRELINGHUYSEN	
17	New York, New York	
18	Thursday, March 4, 2010	
19		
20		
21		
22		
23		
24	Reported by:	
25	JOMANNA DEROSA, CSR JOB NO. 27494	

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	Page 2		Page 3		
1		1			
2		2	APPEARANCES:		
3		3	THE EMMINICES.		
4	March 4, 2010	4			
5	9:40 a.m.	5	JONES DAY, LLP		
6		6	Attorneys for Lehman Brothers, Inc.		
7		7	222 East 41st Street		
8	HIGHLY CONFIDENTIAL Deposition of	8	New York, New York 10017-6702		
9	ANSON FRELINGHUYSEN, held at the offices of	9	BY: JENNIFER L. DEL MEDICO, ESQ.		
10	Boies Schiller & Flexner, LLP, 575 Lexington	10	,		
11	Avenue, New York, New York, pursuant to	11			
12	Notice, before Jomanna DeRosa, a Certified	12	BOIES SCHILLER & FLEXNER, LLP		
13	Shorthand Reporter and Notary Public of the	13	Attorneys for Barclays		
14	States of New York, New Jersey, California	14	5301 Wisconsin Avenue, N.W.		
15	and Arizona.	15	Washington, D.C. 20015		
16		16	BY: JONATHAN SHAW, ESQ.		
17		17			
18		18			
19		19	HUGHES HUBBARD & REED, LLP		
20		20	Attorneys for SIPA Trustee		
21		21	One Battery Park Plaza		
22		22	New York, New York 10004		
23		23	BY: SETH D. ROTHMAN, ESQ.		
24		24			
25		25			
	Page 4		Page 5		
1		1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL		
2	APPEARANCES (Continued):	2	THE VIDEOGRAPHER: This is the		
3		3	start of tape No. 1 of the videotaped		
4		4	deposition of Anson Frelinghuysen in the		
5	QUINN EMANUEL URQUHART OLIVER & HEDGES, LLI	5	matter In re Lehman.		
6	Attorneys for the Creditors Committee	6	Today's date is March 4th, 2010, at		
7	51 Madison Avenue, 22nd Floor	7	approximately 9:40 a.m.		
8	New York, New York 10010	8	Will the court reporter please		
9	BY: ERIC M. KAY, ESQ.	9	swear in the witness.		
10		10	ANSON FRELINGHUYSEN, called as		
11		11	a witness, having been duly affirmed by a		
12	ALSO PRESENT:	12	Notary Public, was examined and testified		
13	JOSH LIPSON, Videographer	13	as follows:		
14		14	EXAMINATION BY		
15		15	MR. SHAW:		
16			O Ma E-1:1		
		16	Q. Mr. Frelinghuysen, my name is		
17		17	Jonathan Shaw. We met off the record a moment		
18		17 18	Jonathan Shaw. We met off the record a moment ago. I'm with Boies, Schiller & Flexner, and I		
18 19		17 18 19	Jonathan Shaw. We met off the record a moment ago. I'm with Boies, Schiller & Flexner, and I represent Barclays Capital, Inc.		
18 19 20		17 18 19 20	Jonathan Shaw. We met off the record a moment ago. I'm with Boies, Schiller & Flexner, and I represent Barclays Capital, Inc. You're an associate of Hughes		
18 19 20 21		17 18 19 20 21	Jonathan Shaw. We met off the record a moment ago. I'm with Boies, Schiller & Flexner, and I represent Barclays Capital, Inc. You're an associate of Hughes Hubbard & Reed. Is that correct?		
18 19 20 21 22		17 18 19 20 21 22	Jonathan Shaw. We met off the record a moment ago. I'm with Boies, Schiller & Flexner, and I represent Barclays Capital, Inc. You're an associate of Hughes Hubbard & Reed. Is that correct? A. That's correct.		
18 19 20 21 22 23		17 18 19 20 21 22 23	Jonathan Shaw. We met off the record a moment ago. I'm with Boies, Schiller & Flexner, and I represent Barclays Capital, Inc. You're an associate of Hughes Hubbard & Reed. Is that correct? A. That's correct. Q. And you were an associate of Hughes		
18 19 20 21 22		17 18 19 20 21 22	Jonathan Shaw. We met off the record a moment ago. I'm with Boies, Schiller & Flexner, and I represent Barclays Capital, Inc. You're an associate of Hughes Hubbard & Reed. Is that correct? A. That's correct.		

	1917		
	Page 6		Page 7
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	A. I was.	2	Q. Sunday the 14th. Okay.
3	Q. How long at law school were you?	3	And did you get any further
4	A. I graduated from Brooklyn Law	4	instruction in the course of that phone call?
5	School in June of 2007.	5	A. No.
6	Q. And you've been at Hughes Hubbard	6	Q. Can you give me an overview of what
7	your entire career?	7	you did in connection with that matter between
8	A. I have been.	8	starting work on September the 14th and the
9	Q. Since September 2008 you've been	9	closing of the transaction on the morning of
10	working on the SIPA liquidation of Lehman	10	September 22nd.
11	Brothers, Inc. Is that correct?	11	MR. ROTHMAN: You can give him a
12	A. Yes.	12	general overview without revealing any
13	Q. When were you first assigned to	13	privileged information.
14	that matter?	14	A. As a first-year associate, I
15	A. I was first assigned to the Lehman	15	prepared some of the documents associated with the
16	Brothers, Inc. matter on September 13th.	16	filing of the SIPA liquidation. I attended the
17	Q. And how did you learn on	17	district court hearing in which Lehman Brothers,
18	September 13th that you would be working on that	18	Inc. was placed in liquidation. I also attended
19	matter?	19	the closing of the transaction between Lehman
20	A. I received a call from Mr. Margolin	20	Brothers, Inc. and Barclays.
21	that he would like for me to come into the office	21	Q. I take it, then, that you did not
22	the next morning.	22	attend the September 19th sale hearing?
23	Q. "The next morning" being Saturday	23	A. I was I was at the
24	the 14th?	24	September 19th sale hearing before it began.
25	A. Sunday the 14th.	25	Q. And you left to go where?
	·		
	Page 8		Page 9
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	A. There were other documents that	2	others were signed on Sunday, September 21st.
3	needed to be prepared in connection with the	3	Q. Were any signed on the morning of
4	Trustee's appointment.	4	the 22nd?
5	Q. And I take it you also did not	5	A TC 41
		_	A. If they were signed on the morning
6	attend the September 17th hearing?	6	of the 22nd it would have been, you know, between
7	attend the September 17th hearing? A. I did not attend that hearing.		
7	attend the September 17th hearing?A. I did not attend that hearing.Q. Over the weekend following the sale	6	of the 22nd it would have been, you know, between midnight and 2:00 a.m. And actually, there were further documents signed later in the morning.
7 8 9	A. I did not attend that hearing? Q. Over the weekend following the sale hearing, did you participate in any discussions	6 7 8 9	of the 22nd it would have been, you know, between midnight and 2:00 a.m. And actually, there were further documents signed later in the morning. Q. Later in the morning of the 22nd?
7 8 9 10	A. I did not attend that hearing? Q. Over the weekend following the sale hearing, did you participate in any discussions concerning the documentation of the sale	6 7 8	of the 22nd it would have been, you know, between midnight and 2:00 a.m. And actually, there were further documents signed later in the morning. Q. Later in the morning of the 22nd? A. Yes.
7 8 9 10 11	A. I did not attend that hearing? A. Over the weekend following the sale hearing, did you participate in any discussions concerning the documentation of the sale transaction?	6 7 8 9 10 11	of the 22nd it would have been, you know, between midnight and 2:00 a.m. And actually, there were further documents signed later in the morning. Q. Later in the morning of the 22nd? A. Yes. Q. What documents were signed later in
7 8 9 10 11 12	A. I did not attend that hearing? Q. Over the weekend following the sale hearing, did you participate in any discussions concerning the documentation of the sale transaction? A. I did, yes.	6 7 8 9 10 11 12	of the 22nd it would have been, you know, between midnight and 2:00 a.m. And actually, there were further documents signed later in the morning. Q. Later in the morning of the 22nd? A. Yes. Q. What documents were signed later in the morning of the 22nd?
7 8 9 10 11 12 13	A. I did not attend that hearing? Q. Over the weekend following the sale hearing, did you participate in any discussions concerning the documentation of the sale transaction? A. I did, yes. Q. Setting aside any purely internal	6 7 8 9 10 11 12	of the 22nd it would have been, you know, between midnight and 2:00 a.m. And actually, there were further documents signed later in the morning. Q. Later in the morning of the 22nd? A. Yes. Q. What documents were signed later in the morning of the 22nd? A. The services and settlement
7 8 9 10 11 12 13	A. I did not attend that hearing? Q. Over the weekend following the sale hearing, did you participate in any discussions concerning the documentation of the sale transaction? A. I did, yes. Q. Setting aside any purely internal discussions between you and the Trustee or the	6 7 8 9 10 11 12 13	of the 22nd it would have been, you know, between midnight and 2:00 a.m. And actually, there were further documents signed later in the morning. Q. Later in the morning of the 22nd? A. Yes. Q. What documents were signed later in the morning of the 22nd? A. The services and settlement agreement was signed in the morning, as well as
7 8 9 10 11 12 13 14	A. I did not attend that hearing? Q. Over the weekend following the sale hearing, did you participate in any discussions concerning the documentation of the sale transaction? A. I did, yes. Q. Setting aside any purely internal discussions between you and the Trustee or the Trustee's lawyers at Hughes Hubbard, tell me what	6 7 8 9 10 11 12 13 14	of the 22nd it would have been, you know, between midnight and 2:00 a.m. And actually, there were further documents signed later in the morning. Q. Later in the morning of the 22nd? A. Yes. Q. What documents were signed later in the morning of the 22nd? A. The services and settlement agreement was signed in the morning, as well as the DTCC letter.
7 8 9 10 11 12 13 14 15 16	A. I did not attend that hearing? Q. Over the weekend following the sale hearing, did you participate in any discussions concerning the documentation of the sale transaction? A. I did, yes. Q. Setting aside any purely internal discussions between you and the Trustee or the Trustee's lawyers at Hughes Hubbard, tell me what discussions concerning the documentation with the	6 7 8 9 10 11 12 13 14 15	of the 22nd it would have been, you know, between midnight and 2:00 a.m. And actually, there were further documents signed later in the morning. Q. Later in the morning of the 22nd? A. Yes. Q. What documents were signed later in the morning of the 22nd? A. The services and settlement agreement was signed in the morning, as well as the DTCC letter. Q. Were you physically present at the
7 8 9 10 11 12 13 14 15 16	A. I did not attend that hearing? Q. Over the weekend following the sale hearing, did you participate in any discussions concerning the documentation of the sale transaction? A. I did, yes. Q. Setting aside any purely internal discussions between you and the Trustee or the Trustee's lawyers at Hughes Hubbard, tell me what discussions concerning the documentation with the transaction you were involved in.	6 7 8 9 10 11 12 13 14 15 16	of the 22nd it would have been, you know, between midnight and 2:00 a.m. And actually, there were further documents signed later in the morning. Q. Later in the morning of the 22nd? A. Yes. Q. What documents were signed later in the morning of the 22nd? A. The services and settlement agreement was signed in the morning, as well as the DTCC letter. Q. Were you physically present at the offices of Weil Gotshal at any time during that
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2	A. I was monitoring the closing	2	A. Those discussions took place all
3	proceedings for the Trustee and reporting back	3	day Saturday, all day Sunday and into Monday
4	information as necessary.	4	morning.
5	Q. When you say you were "monitoring	5	Q. Were you involved were there any
6	the closing proceedings," what do you mean?	6	other representatives of the Trustee at Weil
7	A. There were a number of people there	7	Gotshal?
8	discussing issues related to the closing, and I	8	A. Yes. Mr. Kiplok arrived around
9	would listen to them and let other attorneys at	9	4:00 or 5:00 on Sunday the 21st.
10	HHR and the Trustee know what was going on.	10	Q. 5:00 a.m. or p.m.?
11	Q. And when you say "issues related to	11	A. Oh, p.m.
12	the closing," do you mean substantive issues or	12	Q. And how long did he stay?
13	just logistical issues about how the documents	13	A. Mr. Kiplok and I left together
14	were going to be signed, or both?	14	around 8:00 a.m. on Monday morning.
15	A. There would be both document	15	Q. Why did you sign the documents
16	signing and logistical issues that really were not	16	rather than Mr. Kiplok or someone else more
17	relevant. That was just, what does my signature	17	senior?
18	block look like, you know, that kind of thing,	18	A. Most of the documents were signed
19	which is not relevant.	19	before Mr. Kiplok got there.
20	Primarily, the discussion was	20	Q. Apart from the strike that.
21	between Barclays and JPMorgan Chase over an issue	21	You talked about discussions
22	that they were having that was holding up the	22	between Barclays and JPMorgan that stretched from
23	closing.	23	Saturday through some point on Monday.
24	Q. And when were those discussions	24	Were you present for any portion of
25	taking place?	25	those discussions?
	81		
	Page 12		Page 13
1	Page 12	1	Page 13
1 2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1 2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. Those discussions were behind	2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL Q. Would that be the \$7 billion?
2 3	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. Those discussions were behind closed doors when they were between the parties	2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL Q. Would that be the \$7 billion? A. Yes, that's I recall that being
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1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL		
2	or late afternoon/early evening when I was told	2	Q. You mentioned PIK notes.		
3	that they would not be closing that night because	3	What do you mean by the "PIK		
4	they were working on a few other matters,	4	notes"?		
5	primarily what had been discussed was the	5	A. PIK notes are the payment-in-kind		
6	JPMorgan/Barclays issue, but also he said there	6	notes; that I understood the holding company moved		
7	was this clarification letter.	7	all the subsidiaries out from underneath LBI in		
8	And I said that we should probably	8	return for a PIK note to be valued at a later		
9	have a copy of that.	9	date, and that PIK note was to be delivered to the		
10	Q. And what did he tell you?	10	Trustee.		
11	A. He didn't give me a copy.	11	Q. Aside from the discussion you've		
12	Q. Do you know if there was a copy to	12	already testified about that involved both		
13	give you at that point?	13	Mr. Messineo and Ms. Fife concerning the 15c3-3		
14	A. I didn't know that.	14	account, what other discussions did you have on		
15	Q. Did you later learn that there was	15	Saturday with Ms. Fife?		
16	a copy to give you?	16	A. With Ms. Fife?		
17	A. I've seen documents that have, you	17	Q. Yes.		
18	know, earlier dates.	18	A. None.		
19	Q. You ultimately did receive various	19	Q. What discussions did you have with		
20	drafts of the clarification letter. Is that	20	Mr. Gruszecki or Grabowski, the gentleman from		
21	correct?	21	Cleary Gottlieb?		
22	A. I did receive various drafts of it,	22	A. That those conversations would		
23	yes.	23	have been three-way with Ms. Clausen as we		
24	Q. Over the course of the weekend?	24	discussed the signature pages. Those two		
25	A. Beginning on Sunday evening, yes.	25	associates were primarily working on getting the		
	Page 20		Page 21		
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL		
2	signature pages to all the ancillary documents to	2	between 11:00 and 12:00.		
3	the APA in order and signed in triplicate or	3	Q. Okay. And what did you do on		
4	quadruplicate as necessary.	4	Sunday?		
5	Q. Anything else of significance that	5	A. Sunday was similar to Saturday. We		
6	you did on Saturday?	6	re-signed some of the documents with the proper		
7	A. No. When I left in the evening I	7	date because it was now another day had passed.		
8	gave my contact details to Ms. Clausen and	8	I monitored proceedings again on behalf of the		
9	Mr. Gruszecki in case they needed to contact me in	9	Trustee and reported back any developments.		
10	the event that the deal would actually be able to	10	Q. And when you say you "monitored"		
11	close that night, and I could sign any of the	11	the proceedings, what proceedings are you talking		
12	final documents.	12	about?		
13	Q. What time did you leave?	13	A. There were people in and out of		
14	A. I think I left at 6:30 or 7:00.	14	various rooms, and I was in the hallway. I was		
15	Q. Any additional activity that	15	listening.		
16	evening or that night?	16	Q. And what did you hear when you		
17	A. Yes.	17	listened?		
18	Q. What happened that night?	18	A. Primarily discussions regarding the		
19	A. I communicated with attorneys from	19	Barclays transaction with and the issue with		
20	Hughes Hubbard.	20	JPMorgan.		
	Q. Did you return to Weil Gotshal on Sunday?	21	Q. Anything about the terms of the		
21		22	transaction?		
22		22	A The terms of the Darolana		
22 23	A. I did, yes.	23	A. The terms of the Barclays		
22		23 24 25	A. The terms of the Barclays transaction? MR. ROTHMAN: Which transaction?		

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1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL		
2	Q. The sale transaction.	2	can what you remember about that session between		
3	A. No, that was that was not really	3	1:00 a.m. and 6:00.		
4	being discussed.	4	A. Primarily, Mr. Messineo or		
5	Q. Anything concerning the terms of	5	Mr. Murgio, both of whom had laptops, would make		
6	the clarification letter that you were involved in	6	changes to the clarification letter as they were		
7	discussing on Sunday?	7	discussed between Mr. Murgio and Mr. Messineo and		
8	A. Yes. We would have discussed the	8	Mr. McLaughlin. Mr. McLaughlin would suggest		
9	clarification letter beginning much later on	9	various changes. Mr. Murgio would discuss it with		
10	Sunday night.	10	him. They would then make or not make the change.		
11	Q. And who would you have had those	11	Q. Did you or Mr. Kiplok offer any		
12	discussions with?	12	input into this process?		
13	A. Mr. Kiplok and I went into a room	13	A. No. We were reading along while		
14	with Mr. Messineo, Mr. Murgio. Both of those	14	they made suggestions to the document. We were		
15	individuals are from Weil. Mr. McLaughlin, an	15	not familiar with the document that they had been		
16	attorney from Cleary Gottlieb. And there were a	16	drafting together, so we, you know, let them		
17	few other associates in both of those firms	17	finish it.		
18	sitting in the perimeter of the office. And, you	18	Q. Do you recall any of the		
19	know, we reviewed the clarification letter.	19	substantive issues that were discussed during that		
20	Q. About what time did that did	20	meeting?		
21 22	that occur?	21 22	A. We discussed certain changes to the		
23	A. We were in that room probably	l .	customer account section, which is what we		
24	beginning around 1:00 a.m. on Monday morning	23 24	primarily were focused on. The transfer of		
25	through until about 6:00 or 7:00 in the morning. Q. Tell me in as much detail as you	2 4 25	customer accounts. There was a section about some		
25	Q. Tell me in as much detail as you	23	sort of insurance liability that remained after		
		l .			
	Page 24		Page 25		
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL		
2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL the fact and where that cash would go.	2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL welcome at?		
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	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	the sale transaction over that weekend?	2	MR. SHAW: Yeah. I just wasn't
3	A. I did.	3	MR. ROTHMAN: It wasn't clear when
4	Q. Okay. When was that?	4	you said Kobak, Kiplok, whether they were
5	A. There was a presentation to the	5	MR. SHAW: For the Trustee or also
6	larger group that had gathered at Weil Gotshal on	6	with the Trustee.
7	Sunday night with various individuals from the Fed	7	MR. ROTHMAN: for the Trustee or
8	and the SEC on the phone.	8	also with.
9	Q. What time Sunday night was that?	9	A. Oh. Also with.
10	A. That call remained open from about	10	Q. Tell me in as much detail as you
11	4:00 p.m. until 1:00 a.m.	11	can recall anything of substance discussed on that
12	Q. And were you on that call	12	call
13	constantly from 4:00 p.m. until 1:00 a.m.?	13	A. Again, the focus of that call was
14	A. When I was in the room in which the	14	the Barclays/JPMorgan issue and resolution of
15	line was open. There was a lot of down time on	15	that. The SEC and the Fed were adamant that the
16	that call.	16	deal be closed before business opened on Monday
17	Q. Okay. Do you know who else was on	17	and that those two parties reach a resolution so
18	that call for the Trustee?	18	the deal as discussed on Friday night, the sale
19	A. Mr. Kobak, Mr. Kiplok, the Trustee.	19	hearing, would close.
20	Q. Kobak, Kiplok and the Trustee?	20	And primarily they went through
21	A. You know, it's impossible to say	21	their resolution of the issue. And one part of
22	when people were on and off the call. It lasted	22	that resolution that I recall was that the
23	for a long time.	23	\$250 million of collateral that originally was
24	MR. ROTHMAN: He was just asking	24	going to be paid to LBI was going to be paid to
25	you to clarify your prior answer.	25	not collateral; sorry consideration was going
	Page 32		Page 33
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	to be paid to DTCC.	2	what was discussed on that call that was open from
3	Q. What did paying the collateral to	3	about 4:00 p.m. until about 1:00 a.m.?
4	DTCC have to do with the JPMorgan/Barclays issue?		
		4	A. No, not in detail.
5	A. It was consideration, not	4 5	Q. Approximately how much of that call
6	collateral.		Q. Approximately how much of that call were you present for between 4:00 p.m. and
6 7	collateral. Q. Okay. What did payment of the	5 6 7	Q. Approximately how much of that call were you present for between 4:00 p.m. and 1:00 a.m.?
6 7 8	collateral. Q. Okay. What did payment of the \$250 million of consideration to DTCC have to do	5 6 7 8	Q. Approximately how much of that call were you present for between 4:00 p.m. and 1:00 a.m.? A. Between 4:00 p.m. and 1:00 a.m. the
6 7 8 9	collateral. Q. Okay. What did payment of the \$250 million of consideration to DTCC have to do with the JPMorgan/Barclays issue?	5 6 7 8 9	Q. Approximately how much of that call were you present for between 4:00 p.m. and 1:00 a.m.? A. Between 4:00 p.m. and 1:00 a.m. the call was probably active for two and a half to
6 7 8 9	collateral. Q. Okay. What did payment of the \$250 million of consideration to DTCC have to do with the JPMorgan/Barclays issue? A. I don't know.	5 6 7 8 9	Q. Approximately how much of that call were you present for between 4:00 p.m. and 1:00 a.m.? A. Between 4:00 p.m. and 1:00 a.m. the call was probably active for two and a half to three hours, and I was probably present for all of
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6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	collateral. Q. Okay. What did payment of the \$250 million of consideration to DTCC have to do with the JPMorgan/Barclays issue? A. I don't know. Q. But your understanding was it was somehow related to that? A. I understand if the JPMorgan/Barclays issue was holding up the transaction, that there would be some relation. Q. You said a moment ago that the SEC and the Fed were adamant that the deal be closed before business opened on Monday. What's your basis for saying that? A. I recall voices on the telephone saying, Please resolve this issue before the markets open on Monday.	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. Approximately how much of that call were you present for between 4:00 p.m. and 1:00 a.m.? A. Between 4:00 p.m. and 1:00 a.m. the call was probably active for two and a half to three hours, and I was probably present for all of the active moments of it. Q. And what were you doing when it was inactive? A. We had various side conversations with Hughes Hubbard attorneys, and we had that was pretty much it. Q. Did you or any other representative of the Trustee request any changes to any of the deal documents over the course of that weekend? A. Yeah. We had a lot of changes to the signature blocks of the documents. The DTCC letter we did have some substantive changes to.

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1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL		
2	the Trustee request in the DTCC letter?	2	A. Do you mean via e-mail?		
3	A. I don't recall what they were. I	3	Q. E-mail, somebody marking up an		
4	just remember that there were other discussions	4	agreement; anything like that?		
5	going on.	5	A. You know, we were not physically		
6	Q. And you requested changes.	6	present with DTC attorneys or themselves, so I		
7	Were those changes made?	7	would my recollection is that they would be		
8	A. I don't know.	8	oral requests.		
9	Q. Who requested the changes on behalf	9	Q. And you were not personally		
10	of the Trustee?	10	involved in any discussions concerning the		
11	A. Mr. Kobak and Mr. Kiplok.	11	contents of the DTCC letter. Is that right?		
12	Q. And you don't recall what any of	12	A. Not with DTCC, no.		
13	those requested changes were?	13	Q. With anyone other than internally		
14	A. Not at this time.	14	at Hughes, Hubbard & Reed?		
15	Q. And you don't know whether the	15	A. My discussions about the DTCC		
16	changes that were requested, whatever they were,	16	letter were with Mr. Kiplok.		
17	were actually incorporated in the final letter; do	17	Q. Did the Trustee aside from		
18	you?	18	changes you've mentioned to the signature block,		
19	A. If we signed the letter, they must	19	perhaps, did the Trustee or any of its		
20	have been acceptable to us.	20	representatives request changes to the		
21 22	MR. ROTHMAN: Well, don't guess.	21 22	clarification letter at any time?		
23	A. No, I don't know what the changes		A. I don't know what they did.		
24	were and whether they were incorporated. Q. Do you know whether any requests	23 24	Q. You're not aware of it if they did?A. I'm not aware of anything else than		
25	for changes were made orally or in writing?	25	what I was there for on Monday morning.		
23		23			
	Page 36		Page 37		
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL		
2	Q. While you were there over the	2	Q. And did you sign the clarification		
3	weekend, did anyone ever state or suggest the deal	3	letter?		
4	as documented in the final version of the	4	A. I signed the signature page that's		
5	clarification letter had not been approved by the	5	attached to this letter, yes.		
6	Court?	6	Q. Okay. And you did so on behalf of		
7	A. My understanding of the deal	7	the of James Giddens, Trustee for the SIPA		
8	documents was that they reflected what had been	8	liquidation of Lehman Brothers, Inc.?		
9	presented to the Court on Friday night, and that	9	A. That's correct.		
10	the reason that I was signing was because no	10	Q. When did you sign that signature		
11 12	substantive changes were being made.	11	page?		
13	MR. SHAW: I'll show you what's	12 13	A. I signed the signature page on the		
13	been previously marked as Exhibit 25 in this	14	late evening of Sunday, September 21st or in the		
15	Case.	15	early morning of September 22nd, probably before 1:00 or 2:00 a.m.		
16	Q. I'm just going to ask if you recognize that as the clarification letter that	16	Q. And where were you physically when		
17	you signed on the Trustee's behalf?	17	you signed that page?		
18	MR. ROTHMAN: Objection to the	18	A. I believe at this point for the		
19	form.	19	signing of this one, I went to some internal		
20	Q. Do you recognize that document?	20	office at Weil Gotshal where Mr. Gruszecki and		
21	A. I do recognize this document.	21	Ms. Clausen had been set up once the larger office		
22	Q. Did you and what is the document	22	they had been using had been taken for other		
23	you recognize?	23	purposes. That was the room where all the		
		1			
24	A. The document appears to be the	24	signature pages were being kept in those accordion		
/	A. The document appears to be the clarification letter.	25	signature pages were being kept in those accordion files.		

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1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	Q. And when they gave it to you to	2	room?
3	sign, was there just a signature page or was there	3	A. More people than I could remember
4			
	an agreement attached to the signature page when	4	or describe. It was not the larger conference
5	you were signing it?	5	room. It was kind of small, and it was full.
6	A. It was just the signature page; no	6	Q. Representatives of Barclays?
7	agreement.	7	A. There were representatives of
8	Q. Was there at some point any further	8	Barclays, of JPMorgan, of you know, there were
9	authorization you were required to give before	9	Cleary lawyers, Weil lawyers, Shearman lawyers; a
10	they could use the signature page that you signed?	10	lot of people.
11	A. The deal was closed around	11	Q. Anyone for the creditors committee?
12	8:00 a.m. on Monday morning when the signature	12	A. I recall that there were members of
13	pages were released by the various parties.	13	the creditors committee there during the course
14	Q. And how was how was the how	14	of earlier in the evening. I assumed they
15	were the signature pages that you signed released	15	didn't go home.
16	by the Trustee?	16	Q. And so you're in this room with
17	A. We were in another conference room	17	representatives of various parties.
18	at Weil Gotshal, and all the documents had been	18	And did they have final versions of
19	signed and reached and the funds transferred.	19	all the contract documents?
20	Q. Let me unpack that for a moment.	20	A. No, not at all.
21	You were in a conference room at	21	Q. So how was it that the documents
22		22	were or that the signature pages were released?
23	Weil Gotshal at around 8:00 a.m. Monday morning. Is that correct?	23	I mean, did a representative, for
24		24	
25		25	example, of the Trustee say, "Okay, our signature
25	Q. And who else was in this conference	25	pages are now released," or what happened?
	Page 40		Page 41
1	Page 40 FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	Page 41 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
1 2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL		FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. I don't actually recall that	2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL references a Schedule A and a Schedule B.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. I don't actually recall that moment, but Q. But in some way, was it you or some other representative of the Trustee indicated that it was okay to release the signature pages? A. I didn't. Q. Do you know who did? A. No, I can't recall. Q. Had you read a final version of the clarification letter at that point? A. I had seen drafts of the clarification letter and had read what I thought was the final version, yes. Q. And when you say "what I thought was the final version," do you still believe that was the final version that you read? A. I assumed there were no changes made after we wrapped up. Q. If you'd take a look at the first page of Exhibit 25, and particularly the paragraph that is at the bottom of that page, No. 1(a)(ii).	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	FRELINGHUYSEN - HIGHLY CONFIDENTIAL references a Schedule A and a Schedule B. Do you see that? A. I do see the references to Schedule A and Schedule B. Q. Had you seen those references prior to signing this? A. Had I seen those references? Q. Yes. A. Yes, I had. Q. Did you make any effort to examine Schedule A or Schedule B? A. These schedules were never delivered to us for review. Q. When you say they were not "delivered to us for review," do you mean they were never delivered to the Trustee for review? A. That's I never received a copy of them. Q. And when you say "never," I take it you mean that weekend? A. That's correct.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. I don't actually recall that moment, but Q. But in some way, was it you or some other representative of the Trustee indicated that it was okay to release the signature pages? A. I didn't. Q. Do you know who did? A. No, I can't recall. Q. Had you read a final version of the clarification letter at that point? A. I had seen drafts of the clarification letter and had read what I thought was the final version, yes. Q. And when you say "what I thought was the final version," do you still believe that was the final version that you read? A. I assumed there were no changes made after we wrapped up. Q. If you'd take a look at the first page of Exhibit 25, and particularly the paragraph that is at the bottom of that page, No. 1(a)(ii). Do you see that? A. Yes, I see that paragraph, yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	FRELINGHUYSEN - HIGHLY CONFIDENTIAL references a Schedule A and a Schedule B. Do you see that? A. I do see the references to Schedule A and Schedule B. Q. Had you seen those references prior to signing this? A. Had I seen those references? Q. Yes. A. Yes, I had. Q. Did you make any effort to examine Schedule A or Schedule B? A. These schedules were never delivered to us for review. Q. When you say they were not "delivered to us for review," do you mean they were never delivered to the Trustee for review? A. That's I never received a copy of them. Q. And when you say "never," I take it you mean that weekend? A. That's correct. Q. Do you know whether anyone else, a representative of the Trustee, ever received a
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. I don't actually recall that moment, but Q. But in some way, was it you or some other representative of the Trustee indicated that it was okay to release the signature pages? A. I didn't. Q. Do you know who did? A. No, I can't recall. Q. Had you read a final version of the clarification letter at that point? A. I had seen drafts of the clarification letter and had read what I thought was the final version, yes. Q. And when you say "what I thought was the final version," do you still believe that was the final version that you read? A. I assumed there were no changes made after we wrapped up. Q. If you'd take a look at the first page of Exhibit 25, and particularly the paragraph that is at the bottom of that page, No. 1(a)(ii). Do you see that?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	references a Schedule A and a Schedule B. Do you see that? A. I do see the references to Schedule A and Schedule B. Q. Had you seen those references prior to signing this? A. Had I seen those references? Q. Yes. A. Yes, I had. Q. Did you make any effort to examine Schedule A or Schedule B? A. These schedules were never delivered to us for review. Q. When you say they were not "delivered to us for review," do you mean they were never delivered to the Trustee for review? A. That's I never received a copy of them. Q. And when you say "never," I take it you mean that weekend? A. That's correct. Q. Do you know whether anyone else, a

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		Page 42		Page 43
1	FRFII	NGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2		I don't know what other people	2	following.
3	received.	I don't know what other people	3	Q. And for what purpose were you
4		Do you know if anyone representing	4	looking at them?
5		ee ever asked for copies of either	5	A. To transmit them. They I was
6		A or Schedule B?	6	just passing through. They weren't really
7		I did not.	7	something that I could read.
8	Q.	And you don't know whether anyone	8	Q. To whom did you transmit them?
9	else did?	This you don't know whether anyone	9	A. To Deloitte.
10	A.	I don't know.	10	Q. And when you transmitted them to
11	Q.	Are you aware that final versions	11	Deloitte, did you transmit them with any
12		ale A and Schedule B were filed with the	12	instruction?
13		September 30th, 2008?	13	MR. ROTHMAN: That's a yes-or-no
14		I'm am I aware of that?	14	question.
15	Q.	Yes.	15	A. No.
16	A.	No.	16	Q. Were you involved in the process of
17	Q.	Did you ever have occasion to	17	preparing those final versions of Schedule A and
18		e final filed versions of Schedule A or	18	Schedule B?
19	Schedule		19	A. No.
20	A.	I have seen them.	20	Q. Do you know if any representative
21	Q.	In what context?	21	of the Trustee was involved in preparing the final
22	A.	As .pdf documents.	22	versions of Schedule A or Schedule B?
23	Q.	When approximately did you see	23	A. I do not know.
24	them?	when approximately did you see	24	Q. Do you know if anyone representing
25	A.	At some point in the months	25	the Trustee ever requested to be involved in the
				<u> </u>
		Page 44		Page 45
1		NGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2		on of those final versions of Schedule A	2	A. At DTCC.
3	and Scheo		3	Q. When did you learn that?
4		I do not know.	4	A. I learned that on Monday,
5	Q.	Other than the Trustee and his	5	September 22nd or Tuesday, September 23rd.
6		nave you ever discussed the preparation	6	Q. And how did you come to learn that?
7		ts of Schedule A or Schedule B with	7	A. I began the process of the customer
8	anyone?	NY.	8	account transfers which involved the transfer of
9	A.	No.	9	assets to the benefit of those customers, and the
10	Q.	Are the terms "636 box" and	10	assets had to transfer through DTC.
11 12		' familiar to you?	11 12	Q. And did someone explain to you what
13	A.	I don't normally refer to them that	13	the 636 and 074 boxes were? A. Yes.
14	way.	Olzay	14	
15	_	Okay. MR. ROTHMAN: That wasn't what he	15	
16			16	
17		you, but go ahead. If I were to say the 636 box, what	17	Inc., who became a Barclays Capital employee. Q. Do you know when Mr. Ullman became
18		ur understanding of that be?	18	a Barclays Capital employee?
19		The DTCC participant account of	19	A. I assume he became a Barclays
20	LBI's.	The DTCC participant account of	20	Capital employee the moment that the transaction
21		Okay. And the 074 box, what would	21	changed.
22		erstanding of that be?	22	MR. SHAW: Can we take a short
23		It's another participant account	23	break. This is a logical stopping point.
24	member o		24	THE VIDEOGRAPHER: The time is
25		At the DTCC?	25	10:29. We are going off the record.
	<u>√.</u>	THE WILL DICC.	1-5	10.27. The die going off the feedfu.

FRELINGHUYSEN - HIGHLY CONFIDENTIAL (Recess taken.) THE VIDEOGRAPHER: The time is 10:40. We are back on the record. Q. Mr. Frelinghuysen, could you please give me an overview of what you did in connection with this matter between the closing and the end of September 2008. Page 46 FRELINGHUYSEN - HIGHLY CONI 2 Q. And you had other responsibilit 3 as well over the course of that week or so. 4 that correct? 5 A. I worked on some other matters 6 yes. 7 Q. Were you involved with approv 8 payments from the LBI estate? 9 A. "Approving payments"? I'm no	Page 47 FIDENTIAL
2 (Recess taken.) 3 THE VIDEOGRAPHER: The time is 4 10:40. We are back on the record. 4 that correct? 5 Q. Mr. Frelinghuysen, could you please 6 give me an overview of what you did in connection 7 with this matter between the closing and the end 8 of September 2008. 2 Q. And you had other responsibilit 3 as well over the course of that week or so. 4 that correct? 5 A. I worked on some other matters 6 yes. 7 Q. Were you involved with approve payments from the LBI estate?	FIDENTIAL
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4 10:40. We are back on the record. 5 Q. Mr. Frelinghuysen, could you please 6 give me an overview of what you did in connection 7 with this matter between the closing and the end 8 of September 2008. 4 that correct? 5 A. I worked on some other matters yes. 7 Q. Were you involved with approve payments from the LBI estate?	
 Q. Mr. Frelinghuysen, could you please give me an overview of what you did in connection with this matter between the closing and the end of September 2008. A. I worked on some other matters yes. Q. Were you involved with approve payments from the LBI estate? 	
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8 of September 2008. 8 payments from the LBI estate?	ing
	8
A. Detween the closure on	t
September 22nd through the end of September 2008, 10 sure	
I was I worked primarily on the transfer of 11 MR. ROTHMAN: Objection to	the
customer assets to Neuberger Berman, Barclays and 12 form.	
Prime Brokerage. 13 A. I don't know what that means.	
Q. Anything else? 14 Q. Were the request strike that.	
15 A. I worked on various other kind of 15 What did you understand the lim	its
administrative matters within, you know, the on your authority to act for the Trustee we	
17 liquidation. 17 A. I was	
Q. And what was entailed by the 18 MR. ROTHMAN: Objection to	the
transfer of customer assets to Neuberger Berman, 19 form.	
Barclays and the Prime Brokerage? 20 Q. You can answer.	
A. Primarily it involved authorization 21 A. I was there to transfer customer)
to DTC to transfer customer assets from LBI's assets and to facilitate those movements the	
23 accounts at DTC to accounts other participant 23 the holders of those securities.	
accounts at DTC, Barclays, Ridge, or whomever the Q. In your understanding, did the	
Prime Brokerage people designated. 25 scope of your authority differ depending of	n which
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1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL 1 FRELINGHUYSEN - HIGHLY CONFIDENTIAL 1	
entity you were interacting with? 2 MR. ROTHMAN: Objection to the 3 form.	ne le
1 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3	ID) (C
4 form. 4 A. My authority with the DTC and	
A. The purpose remained to have 5 with respect to LBI's accounts at those bank	KS
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5 A. The purpose remained to have 5 with respect to LBI's accounts at those band 6 custodial banks, such as DTC or any of the others 7 around the world, transfer customer assets as 7 Q. You were on site in Jersey at	ks ntical.
5 A. The purpose remained to have custodial banks, such as DTC or any of the others around the world, transfer customer assets as needed. 5 with respect to LBI's accounts at those bank where customer assets were stored was identified by the customer assets as a customer assets as leading to the customer assets as a customer assets as leading to the customer as leading to the customer assets as leading to the customer as leadi	ks ntical.
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5 A. The purpose remained to have 6 custodial banks, such as DTC or any of the others 7 around the world, transfer customer assets as 8 needed. 9 Q. And in order to accomplish these 10 asset transfers, did you understand that you had 11 been invested with some measure of authority to 12 act on the Trustee's behalf in his dealings or 13 in your dealings with these custodial entities? 14 A. Yes. 15 Q. And what did you understand the 16 scope of the authority you had been given to be? 17 A. That I should encourage or instruct 18 the banks to transfer LBI's assets that were 19 related to customers as necessary. 15 with respect to LBI's accounts at those bank of the where customer assets were stored was ided of the part of the stored was ided on the persod of the transfer yersey City facility for mend that period. Is that right? 10 A. It's been yes. I was at of Hudson Street. 11 70 Hudson Street. 12 Q. Okay. Was Mr. Kiplok there as well? 13 well? 14 A. No, he was not. 15 Q. Were there any other representatives of the Trustee on site in Jersey City? 16 representatives of the Trustee on site in Jersey City? 18 A. In what time period? 19 Q. Between closing and the end of	ks ntical.
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5 A. The purpose remained to have 6 custodial banks, such as DTC or any of the others 7 around the world, transfer customer assets as 8 needed. 9 Q. And in order to accomplish these 10 asset transfers, did you understand that you had 11 been invested with some measure of authority to 12 act on the Trustee's behalf in his dealings or 13 in your dealings with these custodial entities? 14 A. Yes. 15 Q. And what did you understand the 16 scope of the authority you had been given to be? 17 A. That I should encourage or instruct 18 the banks to transfer LBI's assets that were 19 related to customers as necessary. 20 Q. Do you understand yourself to have 21 more or less strike that. 5 with respect to LBI's accounts at those bank where customer assets were stored was iden where customers as these y- at Lehman Brothers' Jersey City facility for mend that period. Is that right? A. It's been yes. I was at 170 Hudson Street. 12 Q. Okay. Was Mr. Kiplok there as well? 13 well? 14 A. No, he was not. 15 Q. Were there any other representatives of the Trustee on site in Jersey City? 16 A. In what time period? 17 Q. Between closing and the end of September. 20 September. 21 A. No.	ks ntical.
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	Page 50		Page 51
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	that time period?	2	that week was to determine if proposed transfers
3	A. There were.	3	of assets should be authorized by the Trustee or
4	Q. Who were they?	4	denied. Correct?
5	A. Mr. Kiplok.	5	A. My role was to assure that the
6	Q. How were responsibilities allocated	6	assets that Barclays' personnel were asking be
7	between you and Mr. Kiplok during that period?	7	transferred got transferred to the extent they
8	A. I worked most entirely with DTCC	8	were customer assets.
9	and with JPMC after Mr. Kiplok had established	9	Q. When you say to the extent that
10	those channels of dealings.	10	they were customer assets, who strike that.
11	Q. And he had responsibility for what,	11	Who gave you your instructions
12	as you understood it?	12	about what your role was?
13	A. He did the JPMC transfers	13	A. About what my role was?
14	initially, and I took over for those since I was	14	Q. Yes.
15	located at the operations center. And that's it.	15	A. Hughes Hubbard attorneys.
16	Q. How much supervision did you	16	Q. Which Hughes Hubbard attorneys
17	receive from more senior lawyers or other	17	particularly?
18	representatives of the Trustee during that week?	18	A. Mr. Kobak, Mr. Kiplok and the
19	MR. ROTHMAN: Objection to the	19	Trustee.
20	form.	20	Q. As exactly as possible, what were
21	Q. You can answer.	21	you told was your role?
22	A. I received general instruction to	22	MR. ROTHMAN: I instruct you not to
23	transfer customer assets as they were presented to	23	answer that question.
24	me	24	Q. In deciding which transfers to
25	Q. One of the responsibilities you had	25	approve and which to deny approval to, how did
	e. one of the responsioning you had		approve and which to delify approval to, now did
	Page 52		Page 53
	Page 52	_	Page 53
1	Page 52 FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	Page 53 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
1 2	Page 52 FRELINGHUYSEN - HIGHLY CONFIDENTIAL you how did you do that?	1 2	Page 53 FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. It would have happened multiple
1 2 3	Page 52 FRELINGHUYSEN - HIGHLY CONFIDENTIAL you how did you do that? MR. ROTHMAN: Again, you can give a	1 2 3	Page 53 FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. It would have happened multiple times in the course of that conversation.
1 2 3 4	Page 52 FRELINGHUYSEN - HIGHLY CONFIDENTIAL you how did you do that? MR. ROTHMAN: Again, you can give a general idea, but please don't reveal any	1 2 3 4	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. It would have happened multiple times in the course of that conversation. Q. And tell me as exactly as you can
1 2 3 4 5	Page 52 FRELINGHUYSEN - HIGHLY CONFIDENTIAL you how did you do that? MR. ROTHMAN: Again, you can give a general idea, but please don't reveal any privileged communications you may have had	1 2 3 4 5	Page 53 FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. It would have happened multiple times in the course of that conversation. Q. And tell me as exactly as you can precisely what you instructed Mr. Ullman with
1 2 3 4 5 6	Page 52 FRELINGHUYSEN - HIGHLY CONFIDENTIAL you how did you do that? MR. ROTHMAN: Again, you can give a general idea, but please don't reveal any privileged communications you may have had with other lawyers at Hughes Hubbard or with	1 2 3 4	Page 53 FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. It would have happened multiple times in the course of that conversation. Q. And tell me as exactly as you can precisely what you instructed Mr. Ullman with respect to with respect to requesting transfers
1 2 3 4 5 6 7	Page 52 FRELINGHUYSEN - HIGHLY CONFIDENTIAL you how did you do that? MR. ROTHMAN: Again, you can give a general idea, but please don't reveal any privileged communications you may have had with other lawyers at Hughes Hubbard or with the Trustee.	1 2 3 4 5 6	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. It would have happened multiple times in the course of that conversation. Q. And tell me as exactly as you can precisely what you instructed Mr. Ullman with respect to with respect to requesting transfers of assets.
1 2 3 4 5 6 7	Page 52 FRELINGHUYSEN - HIGHLY CONFIDENTIAL you how did you do that? MR. ROTHMAN: Again, you can give a general idea, but please don't reveal any privileged communications you may have had with other lawyers at Hughes Hubbard or with the Trustee. A. Okay. I instructed Mr. Ullman that	1 2 3 4 5 6 7 8	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. It would have happened multiple times in the course of that conversation. Q. And tell me as exactly as you can precisely what you instructed Mr. Ullman with respect to with respect to requesting transfers of assets. A. That I needed appropriate
1 2 3 4 5 6 7	Page 52 FRELINGHUYSEN - HIGHLY CONFIDENTIAL you how did you do that? MR. ROTHMAN: Again, you can give a general idea, but please don't reveal any privileged communications you may have had with other lawyers at Hughes Hubbard or with the Trustee. A. Okay. I instructed Mr. Ullman that when he had a request for me to transfer assets,	1 2 3 4 5 6	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. It would have happened multiple times in the course of that conversation. Q. And tell me as exactly as you can precisely what you instructed Mr. Ullman with respect to with respect to requesting transfers of assets. A. That I needed appropriate instructions as to where the assets would be going
1 2 3 4 5 6 7 8	Page 52 FRELINGHUYSEN - HIGHLY CONFIDENTIAL you how did you do that? MR. ROTHMAN: Again, you can give a general idea, but please don't reveal any privileged communications you may have had with other lawyers at Hughes Hubbard or with the Trustee. A. Okay. I instructed Mr. Ullman that when he had a request for me to transfer assets, that he had to state where they were going and for	1 2 3 4 5 6 7 8 9	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. It would have happened multiple times in the course of that conversation. Q. And tell me as exactly as you can precisely what you instructed Mr. Ullman with respect to with respect to requesting transfers of assets. A. That I needed appropriate instructions as to where the assets would be going and where they would be coming from. I needed
1 2 3 4 5 6 7 8 9	Page 52 FRELINGHUYSEN - HIGHLY CONFIDENTIAL you how did you do that? MR. ROTHMAN: Again, you can give a general idea, but please don't reveal any privileged communications you may have had with other lawyers at Hughes Hubbard or with the Trustee. A. Okay. I instructed Mr. Ullman that when he had a request for me to transfer assets,	1 2 3 4 5 6 7 8 9	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. It would have happened multiple times in the course of that conversation. Q. And tell me as exactly as you can precisely what you instructed Mr. Ullman with respect to with respect to requesting transfers of assets. A. That I needed appropriate instructions as to where the assets would be going
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1 2 3 4 5 6 7 8 9 10 11 12	Page 52 FRELINGHUYSEN - HIGHLY CONFIDENTIAL you how did you do that? MR. ROTHMAN: Again, you can give a general idea, but please don't reveal any privileged communications you may have had with other lawyers at Hughes Hubbard or with the Trustee. A. Okay. I instructed Mr. Ullman that when he had a request for me to transfer assets, that he had to state where they were going and for what purpose, and that that purpose needed to be a	1 2 3 4 5 6 7 8 9 10 11	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. It would have happened multiple times in the course of that conversation. Q. And tell me as exactly as you can precisely what you instructed Mr. Ullman with respect to with respect to requesting transfers of assets. A. That I needed appropriate instructions as to where the assets would be going and where they would be coming from. I needed appropriate contact information. I needed confirmation from him that those assets were
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	Page 54		Page 55
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	of situations like that?	2	Q. A former Lehman person who became a
3	A. I do not. I just recall that it	3	Barclays employee effective with the closing.
4	happened more than once.	4	Is that your understanding?
5	Q. With Mr. Ullman or with others?	5	A. That was my understanding is
6	A. With Mr. Ullman or any of his	6	that she was that that was her position, yes.
7	personnel working for him.	7	(Exhibit 669-B marked for
8	Q. And who were the personnel working	8	identification.)
9	for him that you're thinking of?	9	MR. SHAW: I'm showing you what's
10	A. My primary people with whom I	10	been marked as Exhibit 669-B.
11	worked on those customer account transfers and the	11	Q. Take a moment to look at it and
12	transfer of customer assets would have been	12	
		13	then tell me if you recognize this as a
13	Mr. Fondacaro, Mr. Gallagher and Mr. Borzi.		September 26th, 2008, e-mail chain, parts of which
14	Mr. Crispino was worked for them and was also	14	you wrote and parts of which were addressed to
15	involved.	15	you.
16	Q. What about Laura Vecchio; did you	16	A. What was your question?
17	have any contact with her during that period of	17	Q. Sure. Do you recognize this as a
18	time?	18	September 26th, 2008, e-mail or e-mail chain,
19	A. I did.	19	rather, parts of which you wrote and parts of
20	Q. And what was your contact with her?	20	which of which were addressed to you?
21	A. Ms. Vecchio was assisting to	21	A. Yes, I do recognize it as that.
22	coordinate some of the operations.	22	Q. Okay. If you take a look at the
23	Q. And did you understand her to be a	23	earliest e-mail in the chain, that is, the first
24	Barclays employee?	24	chronologically, do you recognize that as an
25	A. Yes.	25	e-mail to you from Mr. Borzi, requesting that the
23	71. 105.		e man to you from wir. Botzi, requesting that the
23	Page 56		
	Page 56		Page 57
1	Page 56 FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	Page 57 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
1 2	Page 56 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Trustee authorize the transfer of PIM Plant	1 2	Page 57 FRELINGHUYSEN - HIGHLY CONFIDENTIAL PIM business was the business of that I had
1 2 3	Page 56 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Trustee authorize the transfer of PIM Plant Securities from LBI's 074 box to Barclays 229 box?	1 2 3	Page 57 FRELINGHUYSEN - HIGHLY CONFIDENTIAL PIM business was the business of that I had known Barclays to have acquired.
1 2 3 4	FRELINGHUYSEN - HIGHLY CONFIDENTIAL Trustee authorize the transfer of PIM Plant Securities from LBI's 074 box to Barclays 229 box? A. I do not see the word "box," but I	1 2 3 4	Page 57 FRELINGHUYSEN - HIGHLY CONFIDENTIAL PIM business was the business of that I had known Barclays to have acquired. Q. When we talk about customer assets,
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	Page 58		Page 59
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	A. Mr. Borzi had included references	2	Q. Did you consult on the transfers of
3	that I had specifically asked him to include, such	3	any assets with more senior attorneys at Hughes
4	as which participant account number it was going	4	Hubbard & Reed or other representatives of the
5	to, that it was related to PIM clients and	5	Trustee?
6	customers. That's it.	6	A. Yes.
7	Q. And so it was important to you that	7	Q. With whom did you consult during
8	Mr. Borzi specify that the assets to be	8	that period of time?
9	transferred were PIM customer assets. Is that	9	A. Mr. Kobak, Mr. Kiplok.
10	right?	10	Q. Anyone else?
11	A. Yes, and that they were being	11	A. At Hughes Hubbard?
12	transferred in connection with Barclays' purchase	12	Q. At Hughes Hubbard or anyone else
13	of the PIM customers under	13	representing the Trustee.
14	Q. Okay. And if I understand you	14	A. No.
15	correctly, when transfers of customer assets were	15	Q. To the best of your recollection,
16	requested, you required that the assets be	16	did requests that you authorize the transfer of
17	identified as customer assets. Is that right?	17	customer assets always specify that the assets in
18	A. Well, my understanding was that	18	question were customer assets?
19	only customer assets were being transferred.	19	A. Requests to me?
20	Q. Where did you get that	20	Q. Yes.
21	understanding from, sir?	21	A. No, they very often did not, and I
22	A. That's what I understood the	22	wouldn't approve them.
23	transaction to include. And certainly that's all	23	Q. Okay. How did when you received
24	I understood to be going on in those first couple	24	such a request, how did you verify that the assets
25	of weeks.	25	requested were actually customer assets?
	Page 60		Page 61
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	A. Based on the information and the	2	September 2008?
3	representation from the Lehman/Barclays employee.	3	A. I did.
4	Q. In connection with any request for	4	Q. Who was Mr. Blackwell, sir?
5	the transfer of assets, was anyone from Barclays	5	Or who rather, who did you
6	ever dishonest with you?	6	understand Mr. Blackwell to be?
7	MR. ROTHMAN: Objection to the	7	A. I understood Mr. Blackwell to be
8	form.	8	the head of global operations of Barclays.
9	A. Was anyone ever dishonest with me?	9	Q. A former Lehmanite?
10	Q. Do you believe that anyone from	10	A. I actually wasn't clear on that.
11	Barclays ever lied to you or attempted to mislead	11	Q. How many times did you discuss the
12	you about the transfer of any assets?	12	transfer of assets with Mr. Blackwell in September
13	MD DOTTINANI C. 11' d'	13	2008?
1	MR. ROTHMAN: Same objection.		
14	A. I would have always understood them	14	A. It's hard to say when in
15	· · · · · · · · · · · · · · · · · · ·	1	A. It's hard to say when in September you know, a number of times.
15 16	A. I would have always understood them to be asking that I transfer customer assets.Q. That's not responsive to my	14 15 16	A. It's hard to say when in September you know, a number of times. Q. Tell me about any specific
15 16 17	A. I would have always understood them to be asking that I transfer customer assets. Q. That's not responsive to my question, sir.	14 15 16 17	A. It's hard to say when in September you know, a number of times. Q. Tell me about any specific discussions you recall having with Mr. Blackwell
15 16 17 18	A. I would have always understood them to be asking that I transfer customer assets. Q. That's not responsive to my question, sir. My question was: In connection	14 15 16 17 18	A. It's hard to say when in September you know, a number of times. Q. Tell me about any specific discussions you recall having with Mr. Blackwell about the transfer of assets.
15 16 17 18 19	A. I would have always understood them to be asking that I transfer customer assets. Q. That's not responsive to my question, sir. My question was: In connection with any requests for transfers of assets, do you	14 15 16 17 18 19	A. It's hard to say when in September you know, a number of times. Q. Tell me about any specific discussions you recall having with Mr. Blackwell about the transfer of assets. A. I recall a specific discussion the
15 16 17 18 19 20	A. I would have always understood them to be asking that I transfer customer assets. Q. That's not responsive to my question, sir. My question was: In connection with any requests for transfers of assets, do you believe that anyone from Barclays was ever	14 15 16 17 18 19 20	A. It's hard to say when in September you know, a number of times. Q. Tell me about any specific discussions you recall having with Mr. Blackwell about the transfer of assets. A. I recall a specific discussion the first week after the closing with Mr. Blackwell.
15 16 17 18 19 20 21	A. I would have always understood them to be asking that I transfer customer assets. Q. That's not responsive to my question, sir. My question was: In connection with any requests for transfers of assets, do you believe that anyone from Barclays was ever dishonest with you?	14 15 16 17 18 19 20 21	A. It's hard to say when in September you know, a number of times. Q. Tell me about any specific discussions you recall having with Mr. Blackwell about the transfer of assets. A. I recall a specific discussion the first week after the closing with Mr. Blackwell. Q. One discussion or more than one
15 16 17 18 19 20 21 22	A. I would have always understood them to be asking that I transfer customer assets. Q. That's not responsive to my question, sir. My question was: In connection with any requests for transfers of assets, do you believe that anyone from Barclays was ever dishonest with you? MR. ROTHMAN: Same objection.	14 15 16 17 18 19 20 21 22	A. It's hard to say when in September you know, a number of times. Q. Tell me about any specific discussions you recall having with Mr. Blackwell about the transfer of assets. A. I recall a specific discussion the first week after the closing with Mr. Blackwell. Q. One discussion or more than one discussion?
15 16 17 18 19 20 21 22 23	A. I would have always understood them to be asking that I transfer customer assets. Q. That's not responsive to my question, sir. My question was: In connection with any requests for transfers of assets, do you believe that anyone from Barclays was ever dishonest with you? MR. ROTHMAN: Same objection. A. No.	14 15 16 17 18 19 20 21 22 23	A. It's hard to say when in September you know, a number of times. Q. Tell me about any specific discussions you recall having with Mr. Blackwell about the transfer of assets. A. I recall a specific discussion the first week after the closing with Mr. Blackwell. Q. One discussion or more than one discussion? A. One discussion with him in his
15 16 17 18 19 20 21 22 23 24	A. I would have always understood them to be asking that I transfer customer assets. Q. That's not responsive to my question, sir. My question was: In connection with any requests for transfers of assets, do you believe that anyone from Barclays was ever dishonest with you? MR. ROTHMAN: Same objection. A. No. Q. Did you communicate with Alastair	14 15 16 17 18 19 20 21 22 23 24	A. It's hard to say when in September you know, a number of times. Q. Tell me about any specific discussions you recall having with Mr. Blackwell about the transfer of assets. A. I recall a specific discussion the first week after the closing with Mr. Blackwell. Q. One discussion or more than one discussion? A. One discussion with him in his office, or an office he was using, followed up by
15 16 17 18 19 20 21 22 23	A. I would have always understood them to be asking that I transfer customer assets. Q. That's not responsive to my question, sir. My question was: In connection with any requests for transfers of assets, do you believe that anyone from Barclays was ever dishonest with you? MR. ROTHMAN: Same objection. A. No.	14 15 16 17 18 19 20 21 22 23	A. It's hard to say when in September you know, a number of times. Q. Tell me about any specific discussions you recall having with Mr. Blackwell about the transfer of assets. A. I recall a specific discussion the first week after the closing with Mr. Blackwell. Q. One discussion or more than one discussion? A. One discussion with him in his

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	Page 62		Page 63
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	Q. So was this in Jersey City?	2	Q. How long did that discussion in an
3	A. This was in Jersey City.	3	office in Jersey City last?
4	Q. Do you recall when during the week	4	A. Around half an hour probably.
5	your discussion with Mr. Blackwell took place?	5	Q. Can you recall anything else about
6	A. I think that it must have been a	6	the discussion?
7	Thursday.	7	A. No.
8	Q. Thursday the	8	Q. Can you recall anything else about
9	A. It should have been the 25th.	9	the approximately \$1 billion in other assets that
10	Q. The 25th.	10	you discussed with Mr. Blackwell?
11	Tell me everything you remember	11	A. He never asked me to transfer it.
12	about that discussion.	12	Q. What did he ask you?
13	A. Mr. Blackwell and I discussed the	13	A. He asked me what steps would be
14	customer transfers that were ongoing and that we	14	necessary to transfer it.
15	were in the process of completing for PIM and PAM.	15	And I said I would get back to him.
16	We discussed some other customer transactions and	16	Q. (And did you get back to him?)
17	that there was an additional transfer of assets	17	A. I did.
18	that needed to occur that valued around	18	Q. And what did you tell him?
19	\$1 billion.	19	A. I drafted him a representation from
20	Q. And what did you understand that	20	him that the assets were appropriate to transfer,
21	\$1 billion in assets to be?	21	and he never responded.
22	A. I don't recall what he said it was.	22	Q. Did you record your time on this
23	Q. Well, do you recall what you	23	case?
24	thought it was?	24	A. As a matter of course, I record my
25	A. No.	25	time.
25	A. (NO.)	23	ume.
	Page 64		Page 65
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	Q. Do you do it daily?	2	Q. Are you aware that such a
3	A. I keep daily track of my time. I	3	submission was made?
4	sometimes catch up at the end of the week.	4	A. I am aware of that submission, yes.
5	Q. Was that true in September of 2008	5	MR. ROTHMAN: Just for the record,
6	that you were keeping daily track of your time?	6	it's a three-page document. The first page
7			it's a timee-page document. The first page
8	A. Yes.	7	
O	A. Yes. Q. Is it fair to say that you	7 8	appears to be a cover page, and then it has pages 46 and 47.
9	Q. Is it fair to say that you	7 8 9	appears to be a cover page, and then it has
			appears to be a cover page, and then it has pages 46 and 47.
9	Q. Is it fair to say that you attempted to record your time accurately?	9	appears to be a cover page, and then it has pages 46 and 47. Q. If you'll take a look at the entry
9	Q. Is it fair to say that you attempted to record your time accurately? A. Yes.	9	appears to be a cover page, and then it has pages 46 and 47. Q. If you'll take a look at the entry that appears at the bottom of page 46 and carries
9 10 11	 Q. Is it fair to say that you attempted to record your time accurately? A. Yes. Q. And that's at least in part because you understood that your time entries would 	9 10 11	appears to be a cover page, and then it has pages 46 and 47. Q. If you'll take a look at the entry that appears at the bottom of page 46 and carries onto the top of page 47 of this document. Do you recognize that as a
9 10 11 12	Q. Is it fair to say that you attempted to record your time accurately? A. Yes. Q. And that's at least in part because you understood that your time entries would ultimately be submitted to the Court in connection	9 10 11 12	appears to be a cover page, and then it has pages 46 and 47. Q. If you'll take a look at the entry that appears at the bottom of page 46 and carries onto the top of page 47 of this document. Do you recognize that as a description of your time for September 24th, 2008?
9 10 11 12 13	Q. Is it fair to say that you attempted to record your time accurately? A. Yes. Q. And that's at least in part because you understood that your time entries would ultimately be submitted to the Court in connection with Hughes Hubbard's fee submission. Is that	9 10 11 12 13	appears to be a cover page, and then it has pages 46 and 47. Q. If you'll take a look at the entry that appears at the bottom of page 46 and carries onto the top of page 47 of this document. Do you recognize that as a description of your time for September 24th, 2008? A. Yes, I do recognize it as that.
9 10 11 12 13 14	Q. Is it fair to say that you attempted to record your time accurately? A. Yes. Q. And that's at least in part because you understood that your time entries would ultimately be submitted to the Court in connection with Hughes Hubbard's fee submission. Is that correct?	9 10 11 12 13 14	appears to be a cover page, and then it has pages 46 and 47. Q. If you'll take a look at the entry that appears at the bottom of page 46 and carries onto the top of page 47 of this document. Do you recognize that as a description of your time for September 24th, 2008? A. Yes, I do recognize it as that. Q. And do you believe that that time
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	Page 66		Page 67
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	And when I say "part," I'm	2	about what appears to be a three-hour discussion
3	referring to the segments that end with a number	3	with David Aronow concerning PB accounts.
4	in parentheses and a semicolon.	4	What did you mean by "PB accounts"?
5		5	
6	A. Yeah. The first part of the entry	6	
7	that ends with a number on page 47 is with respect to PAM transfers.	7	Q. And what did you talk about with
, , , , , , , , , , , , , , , , , , ,			
8	Q. And what were the PAM customer	8	Mr. Aronow about the transfer of prime brokerage
9	accounts?	9	accounts?
10	A. The PAM customer accounts were the	10	A. We had been discussing in the in
11	private asset management customer accounts that	11	the course of the day how to gather assets related
12	were transferred to Ridge as the new broker-dealer	12	to customers to effectuate their transfer to a new
13	for Neuberger Berman.	13	broker-dealer.
14	Q. And if you look at the second and	14	Most of the PIM customers were
15	third portions of the entry for that date, you'll	15	relatively simple accounts. PB accounts hold a
16	see that they talk about PIM transfers. Is that	16	lot of other financial products and have more
17	correct?	17	complicated trading arrangements. We were trying
18	A. That is correct. They do talk	18	to figure out a way operationally to move those
19	about PIM transfers.	19	accounts and their assets.
20	Q. Okay. And what did you mean by	20	Q. And then the final section of your
21	"PIM transfers"?	21	time entry talks about a discussion with
22	A. PIM transfers was the private	22	A. Blackwell Re: Transfer of other LBI assets in
23	investment management business of Lehman Brothers,	23	relation to asset purchase agreement. Is that
24	Inc. that was purchased by Barclays.	24	correct?
25	Q. And then the fourth section talks	25	A. That is correct.
	Page 68		Dage 60
			Page 09
			Page 69
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL Q. And when you wrote about other	2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. He did not disclose to me which
2 3	FRELINGHUYSEN - HIGHLY CONFIDENTIAL Q. And when you wrote about other assets, you're referring to the \$1 billion of	2 3	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. He did not disclose to me which assets they were; only their value.
2 3 4	FRELINGHUYSEN - HIGHLY CONFIDENTIAL Q. And when you wrote about other assets, you're referring to the \$1 billion of other assets that Mr. Blackwell had discussed with	2 3 4	FRELINGHUYSEN - HIGHLY CONFIDENTIAL A. He did not disclose to me which assets they were; only their value. Q. Now having read your time entry for
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2 them? 3 A. I have reviewed this document, yes. 4 Q. Do you recognize that as an e-mail 5 that you wrote to Mr. Blackwell on the 25th of 6 September, 2008? 7 A. Yes, I do. 8 Q. And you copied Mr. Giddens, 9 Mr. Kobak and Mr. Kiplok on that e-mail. Is that correct? 11 A. That's correct. 12 Q. And why did you copy them 12 particularly? 13 particularly? 14 A. I copied my supervisors on a 15 regular basis. 16 Q. Okay, And you had discussed this 16 issue between your conversation with 17 issue between your conversation with 18 Mr. Blackwell on the 24th and the time you sent 18 between your conversation with 19 Mr. Blackwell on the 25th, you had discussed this 20 With at least Mr. Kobak and Mr. Kiplok, Is that 21 right? 22 d. A. That's correct. 23 right? 24 A. That's correct. 25 Q. Had you run a draft of this past 26 Q. And when you say 'discussed 27 the LB/Bardays transaction. 28 general on the 25th, you had discussed this 29 stream on the 25th, you had discussed this 20 with at least Mr. Kobak and Mr. Kiplok, Is that 21 right? 22 d. A. That's correct. 24 A. That's correct. 25 Q. Had you run a draft of this past 26 partic." you're referring to the discussions 27 the LB/Bardays transaction. 28 that promote the discussions 29 the movement of the 29 particularly? 20 And when you say 'discussed 21 them? 22 them? 23 regular had the time you sent 24 the state of the control of the promote the prom		Page 70		Page 71
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A. I have reviewed this document, yes. Q. Do you recognize that as an e-mail that you wrote to Mr. Blackwell on the 25th of September, 2008? A. Yes, I do. M. Kobak and Mr. Kiplok on that e-mail. Is that correct? A. That's correct. Q. And why did you copy them particularly? A. I copied my supervisors on a regular basis. Q. Okay. And you had discussed this sisue between your conversation with Mr. Blackwell - strike that. Between your conversation with Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this right? A. That's correct. Q. Had you run a draft of this past Page 72 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Q. And why did you na direct that the you sand shown on your time records for the 24th. Right? A. Yes, that's correct. Q. And why did you need that letter? A. Because he had stated that they were due as part of the asset purchase greement, who were going to be basing that movement on his representation. FRELINGHUYSEN - HIGHLY CONFIDENTIAL Q. And why did you need that letter? A. Wes, that's correct. Q. And why did you need that letter? A. Because he had stated that they were due as part of the asset purchase greement, and we were going to be basing that movement on his representation. Mr. Blackwell in connection with the transfer you discussed with him, not to answer that question. I think how to the draft letter that hen reded to this e-mail is a letter to submit before the Trustee would: " authorize the movement of the positions discussed earlier that are due as part of the asset purchase." Capital pursuant to the asset purchase this is that right? A. That's correct. Q. Had you run a draft of this past Page 72 FRELINGHUYSEN - HIGHLY CONFIDENTIAL discussed between me and Mr. Borzi, Mr. Ullman and Mr. Borzi the movement on his representation. Mr. Blackwell in connection with the transfer you discussed with him, huch the dear a final representation. Mr. Blackwell in connection with the transfer you discussed with him, huch as a part of the Litter? A. No. M	2		2	
4 him not to answer that question. I finink 5 that you wrote to Mr. Blackwell on the 25th of 6 September, 2008? 7 A. Yes, I do. 8 Q. And you copied Mr. Giddens, 9 Mr. Robak and Mr. Kiplok on that e-mail. Is that 10 correct? 11 A. That's correct. 12 Q. And why did you copy them 12 A. To opied my supervisors on a 14 regular basis. 16 Q. Okay. And you had discussed this 17 regular basis. 18 W. Blackwell on the 25th, you had discussed this 19 Between your conversation with 19 Mr. Blackwell on the 25th, you had discussed this 19 Between your conversation with 19 Mr. Blackwell on the 25th, you had discussed this 10 with at least Mr. Kobak and Mr. Kiplok. Is that 11 right? 12 with at least Mr. Kobak and Mr. Kiplok. Is that 12 right? 13 A. That's correct. 14 A. That's correct. 25 Q. Had you run a draft of this past 26 FRELINGHUYSEN - HIGHLY CONFIDENTIAL 27 A. Because had stated that they 28 were due as part of the asset purchase agreement, 29 and we were going to be basing that movement on 20 his representation. 21 q. And you didn't request a similar 21 quert when Mr. Borzi asked you to authorize 22 transfer of pending client securities; did you? 23 different. 24 A. No. 25 Q. Why did you request a letter from 26 Mr. Blackwell in connection with the transfer you 27 discussed with him, but didn't request a similar 28 eletter from Mr. Borzi in connection with the transfer you 29 different. 29 Mr. Robak and the transfer you 20 different. 21 different. 22 A. The nature of the transfer was 23 different. 24 A. The nature of the transfer was 24 different. 25 Q. In what Fm sorry, Go ahead. 26 different. 27 Mr. Blackwell in connection with the 28 different. 29 Mr. Blackwell in connection with the transfer you 30 different. 31 different. 32 different. 33 different. 34 Mr. Blackwell in connection with the transfer you 35 different. 36 different. 37 Mr. Blackwell in connection with the transfer you 36 different. 38 down on our time records for the 24th. Right? 39 draw the main that the prevail of the discussions of the defense o	3	A. I have reviewed this document, yes.	3	
that you wrote to Mr. Blackwell on the 25th of September, 2008? A. Yes, I do. Q. And you copied Mr. Giddens, Mr. Kobak and Mr. Kiplok on that e-mail. Is that correct? A. That's correct. Q. And why did you copy them particularly? A. I copied my supervisors on a regular basis. Q. Okay, And you had discussed this Regular basis. Q. Okay, And you had discussed this Mr. Blackwell on the 24th and the time you sent Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this Mr. Blackwell on the 24th and the time you sent that least Mr. Kobak and Mr. Kiplok. Is that right? A. A. That's correct. Q. And when you say "discussed" A. Yes, that's correct. Q. And why did you need that letter? A. That's correct. Q. And why did you need that letter? A. Because he had stated that they were due as part of the asset purchase agreement, and where you had the time you sent this e-mail to the private the movement of the positions discussed earlier that are due	4	· · · · · · · · · · · · · · · · · · ·	4	
6 September, 2008? 7 A. Yes, I do. 8 Q. And you copied Mr. Giddens, 9 Mr. Kobak and Mr. Kiplok on that e-mail. Is that 10 correct? 11 A. That's correct. 12 Q. And why did you copy them 13 particularly? 14 A. I copied my supervisors on a 15 regular basis. 16 Q. Okay, And you had discussed this 16 R. Blackwell on the 24th and the time you sent to Mr. Blackwell and the 24th and the time you sent to Mr. Blackwell on the 25th, you had discussed this 18 Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this 19 With at least Mr. Kobak and Mr. Kiplok. Is that right? 20 And when you say discussed 31 carlier, you're referring to the discussions 44 Shown on your time records for the 24th. Right? 45 A. Yes, that's correct. 46 Q. And why did you need that letter? 47 A. Because he had stated that they 48 were due as part of the asset purchase agreement, and why did you need that letter? 49 A. Recause had stated that they 40 And we were going to be basing that movement on his representation. 41 I glear when Mr. Borrai asked you to authorize transfer of pending client securities; did you? 41 A. No. 42 Q. Mr. Kobak and Mr. Kiplok. Is that right? 43 A. That's correct. 44 Shown on your time records for the 24th. Right? 45 A. Yes, that's correct. 46 Q. And why did you need that letter? 47 A. Because had stated that they 48 were due as part of the asset purchase agreement, and when you say "discussed" the same that they were the same that they were due as part of the asset purchase agreement, and when you say discussed the same that they were due as part of the sast purchase agreement, and when you say discussed the same that they were due as part of the sast purchase agreement, and when you say discussed the same that they were due as part of the sast purchase agreement, and when you say discussed the same that they were due as part of the sast purchase agreement, and when you say discussed the same that they were due as part of the sast purchase agreement, and when you say discussed the sa	5		5	
A. Yes, I do. Q. And you copied Mr. Giddens, 9 Mr. Kobak and Mr. Kiplok on that e-mail. Is that 10 correct? 11 A. That's correct. 12 Q. And why did you copy them 12 a particularly? 13 particularly? 14 A. I copied my supervisors on a regular basis. 15 C. Okay. And you had discussed this 16 Q. Okay. And you had discussed this 17 issue between your conversation with 18 Mr. Blackwell - strike that. 19 Between your conversation with 19 Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this 22 with at least Mr. Kobak and Mr. Kiplok. Is that right? 23 right? 24 A. That's correct. 25 Q. Had you run a draft of this past 26 Q. Had you run a draft of this past 27 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Q. And why did you need that letter? 28 A. Show on your time records for the 24th. Right? 30 A. Yes, that's correct. 40 A. My C. Shak's correct. 51 A. Yes, that's correct. 52 Q. And why did you didn't request a similar letter when Mr. Borzi asked you to authorize the movement of the your didn't request a similar letter when Mr. Borzi asked you to authorize the movement of the your didn't request a similar letter when Mr. Borzi asked you to authorize the movement of the your didn't request a similar letter from Mr. Blackwell in connection with the transfer you discussed with him, but didn't request a similar letter from Mr. Borzi in connection with the asset purchase agreement, and represented the sew ere coing to be basing that movement on his representation. 4 A. No. 6 Q. And why did you request a letter from Mr. Blackwell in connection with the ransfer you discussed with him, but didn't request a similar letter from Mr. Borzi in connection with the ransfer you discussed with him, but didn't request a similar letter from Mr. Borzi in connection with the ransfer you discussed with him, but didn't request a similar letter from Mr. Borzi in connection with the ransfer you discussed with him, but didn't request a similar letter from Mr. Borzi in connection with the ransfer you discussed wi		•	1	
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9 Mr. Kobak and Mr. Kiplok on that e-mail. Is that correct? 10 A. That's correct. 11 A. That's correct. 12 Q. And why did you copy them 13 particularly? 14 A. I copied my supervisors on a 15 regular basis. 16 Q. Okay. And you had discussed this issue between your conversation with 17 issue between your conversation with 18 Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this 21 this e-mail on the 25th, you had discussed this 22 with at least Mr. Kobak and Mr. Kiplok. Is that right? 19 A. That's correct. 20 And when you say "discussed 23 carlier," you're referring to the discussions whom on your time records for the 24th. Right.? 21 A. Yes, that's correct. 22 A. Because he had stated that they and we were going to be basing that movement on his representation. 23 and we were going to be basing that movement on his representation. 24 A. No. 25 Mr. Blackwell in the casted you to authorize transfer or pending client securities; did you? 26 Mr. Blackwell in the casted you to authorize transfer or pending client securities; did you? 26 Mr. Blackwell in an office? 27 A. Because with him, but didn't request a similar letter when Mr. Borzi asked you to authorize transfer or pending client securities; did you? 28 Mr. Blackwell in connection with the transfer you discussed with him, but didn't request a similar letter transfer when Mr. Borzi in connection with the transfer you discussed with him, but didn't request a similar letter from Mr. Backwell in connection with the transfer you discussed with him, but didn't request a similar letter from Mr. Backwell in an office? 28 A. That's correct. 29 A. The nature of the transfer was didn't request a similar letter from Mr. Backwell in an office? 29 A. The nature of the transfer was different. 29 A. The nature of the transfer was different. 29 A. The nature of the transfer was different. 29 A. The nature of the transfer was different. 29 A. The nature of the transfer was different. 29 A. The nature of the transfer was different. 29 A.	8		8	•
correct? A. That's correct. Q. And why did you copy them particularly? A. I copied my supervisors on a Fregular basis. Q. Okay. And you had discussed this regular basis. Q. Okay. And you had discussed this suse between your conversation with Mr. Blackwell - strike that. Between your conversation with Mr. Blackwell on the 24th and the time you sent this e-mail on the 25th, you had discussed this with a least Mr. Kobak and Mr. Kiplok. Is that right? A. That's correct. Q. I was actually quoting from your e-mail. Sorry. I asked a confusing question. Let me start again. You sent Mr. Blackwell a letter that he needed to submit before the Trustee would: " authorize the movement of the positions discussed artier that are due as part of the LBI/Barclays transaction." Is that right? A. It says: Q. I was actually quoting from your e-mail. Sorry. I asked a confusing question. Let me start again. You sent Mr. Blackwell a letter that he needed to submit before the Trustee would: " authorize the movement of the positions discussed earlier that are due as part of the LBI/Barclays transaction." Is that right? A. It says: Q. I was actually quoting from your e-mail. Sorry. I asked a confusing question. Let me start again. Let me start again. You sent Mr. Blackwell a letter that he needed to submit before the Trustee would: " authorize the movement of the positions discussed earlier that are due as part of the LBI/Barclays transaction." Is that right? A. That's correct. Page 72 FRELINGHUYSEN - HIGHLY CONFIDENTIAL. Q. And when you say discussed shown on your time records for the 24th. Right? A. Yes, that's correct. A. Yes, that's correct. Q. And why did you need that letter? A. Because he had stated that they Mr. Blackwell had brought me into a separate room on diccosed the door. You mean the two of you went and sat at a desk in an office? A. No. Q. Why did you request a similar letter when Mr. Borzi asked you to authorize the correct pending client securities; did you? A. No. Q. Why did you		-	1	
11 A. That's correct. 12 Q. And why did you copy them 13 particularly? 14 A. I copied my supervisors on a 15 regular basis. 16 Q. Okay. And you had discussed this 17 issue between your conversation with 18 Mr. Blackwell - strike that. 19 Between your conversation with 19 Mr. Blackwell on the 24th and the time you sent 19 with at least Mr. Kobak and Mr. Kiplok. Is that 19 with at least Mr. Kobak and Mr. Kiplok. Is that 19 TRELINGHUYSEN - HIGHLY CONFIDENTIAL 20 Q. Had you run a draft of this past 21 FRELINGHUYSEN - HIGHLY CONFIDENTIAL 21 Q. And when you say "discussed day and when you say "discussed day and when you re referring to the discussions shown on your time records for the 24th. Right? 22 A. Because he had stated that they 23 were due as part of the asset purchase agreement, and we were going to be basing that movement on his representation. 11 Q. And why did you need that letter? 12 A. Because he had stated that they 13 A. No. 24 A. No. 25 Q. Why did you request a similar letter when Mr. Borzi asked you to authorize and we were going to be basing that movement on his representation. 12 Letter star and the descention with the transfer of pending client securities; did you? 13 Letter from Mr. Borzi asked you to authorize discussed with him, but didn't request a similar letter when Mr. Borzi asked you to authorize discussed with him, but didn't request a similar letter from Mr. Borzi air connection with the transfer of pending client securities; did you? 15 Q. Why did you request a letter from 16 Mr. Blackwell in connection with the transfer you discussed with him, but didn't request a similar letter from Mr. Borzi in connection with the transfer we looked at? 19 MR. ROTHMAN: Objection to the form. 20 The nature of the transfer was 21 different. 22 different. 23 different. 24 A. That right? 25 In that letter you ask 26 Mr. Blackwell to confirm that the requested assets were:	10		10	
12 Q. And why did you copy them 13 particularly? 14 A. I copied my supervisors on a 15 regular basis. 15 Q. Okay. And you had discussed this 16 Q. Okay. And you had discussed this 17 issue between your conversation with 18 Mr. Blackwell strike that. 18 Between your conversation with 19 Between your conversation with 19 Between your conversation with 19 Mr. Blackwell on the 24th and the time you sent 21 this e-mail on the 25th, you had discussed this 22 with at least Mr. Kobak and Mr. Kiplok. Is that 23 right? 24 A. That's correct. 25 Q. Had you run a draft of this past 26 FRELINGHUYSEN - HIGHLY CONFIDENTIAL 2 Q. And when you say "discussed 3 earlier," you're referring to the discussions 4 shown on your time records for the 24th. Right? 5 A. Yes, that's correct. 6 Q. And why did you need that letter? 6 A. Yes, that's correct. 9 And why did you need that letter? 10 A. Pescape had stated that they 11 Q. And you didn't request a similar 12 letter when Mr. Borzi in connection with the transfer of pending client securities; did you? 13 transfer of pending client securities; did you? 14 A. No. 15 Mr. Blackwell in connection with the transfer of pending client securities; did you? 16 Mr. Blackwell in connection with the transfer you discussed with him, but didn't request a similar letter from Mr. Borzi in connection with the transfer of pending client securities; did you? 17 MR. ROTHMAN: Objection to the form. 18 Mr. Blackwell in connection with the transfer was 20 MR. ROTHMAN: Objection to the form. 21 A. The nature of the transfer was 22 different. 23 different. 24 A. The attraction of 15 people who were on the team working on it. 25 Q. In what I'm sorry. Go ahead. 26 Mr. Blackwell to confirm that the requested assets, were: 27 A. The nature of the transfer was 28 different. 29 MR. ROTHMAN: Objection to the form. 20 MR. Blackwell to confirm that the requested assets, were: 29 Mr. Blackwell to confirm that the requested assets.			1	
1.3 particularly? 1.4 A. I copied my supervisors on a 1.5 regular basis. 1.6 Q. Okay. And you had discussed this 1.7 issue between your conversation with 1.8 Mr. Blackwell strike that. 1.9 Between your conversation with 1.9 Between your conversation with 1.0 Mr. Blackwell on the 24th and the time you sent 1.1 this e-mail on the 25th, you had discussed this 1.2 with at least Mr. Kobak and Mr. Kiplok. Is that 1.2 with at least Mr. Kobak and Mr. Kiplok. Is that 1.2 my that least Mr. Kobak and Mr. Kiplok. Is that 1.2 my that least Mr. Kobak and Mr. Kiplok. Is that 1.3 my the semand on the 25th, you had discussed this 1.4 my that least Mr. Kobak and Mr. Kiplok. Is that 1.5 my that least Mr. Kobak and Mr. Kiplok. Is that 1.6 my that least Mr. Kobak and Mr. Kiplok. Is that 1.0 my that least Mr. Kobak and Mr. Kiplok. Is that 1.1 my that least Mr. Kobak and Mr. Kiplok. Is that 1.2 my that least Mr. Kobak and Mr. Kiplok. Is that 1.3 my that least Mr. Kobak and Mr. Kiplok. Is that 1.4 my that least Mr. Kobak and Mr. Kiplok. Is that 1.5 my that least Mr. Kobak and Mr. Kiplok. Is that 1.6 my. Blackwell on the 25th, you had discussed this 1.7 my that least Mr. Kobak and Mr. Kiplok. Is that 1.8 my until Sorry. I tasked a confusing question. 1.2 tet me that leater that he needed to submit before the Trustee would: 1.2 my that least Mr. Kobak and Mr. Kiplok. Is that 1.2 my that least Mr. Kobak and Mr. Kiplok. Is that 1.3 my that least Mr. Kobak and Mr. Kiplok. Is that 1.4 my that least Mr. Kobak and Mr. Kiplok. Is that 1.5 my that least Mr. Kobak and Mr. Kiplok. Is that 1.5 my that least Mr. Kobak and Mr. Kiplok. Is that 1.6 my that least Mr. Kobak and Mr. Kiplok. Is that 1.7 my that least Mr. Kobak and Mr. Kiplok. Is that 1.8 my until Sorry. I tasked a confusing question. 1.2 muthorize the movement of the 1.2 muthorize the movement of the 1.2 muthorize the movement of the 1.3 muthorize the movement of the 1.4 muthorize the movement of the 1.5 muthorize the movement of the 1.5 muthorize the movement of the 1.5 muthorize the	12		12	=
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15 regular basis. Q. Okay. And you had discussed this is use between your conversation with 17 is between your conversation with 18 Mr. Blackwell strike that. 18 Mr. Blackwell strike that. 19 Between your conversation with 19 Mr. Blackwell or 25th, you had discussed this 21 this e-mail on the 25th, you had discussed this 22 with at least Mr. Kobak and Mr. Kiplok. Is that 22 right? 23 right? 24 A. That's correct. 24 D. Had you run a draft of this past 25 Q. And when you say "discussed ariler," you're referring to the discussions shown on your time records for the 24th. Right? 15 A. Yes, that's correct. 26 Q. And why did you need that letter? 27 A. Because he had stated that they were due as part of the asset purchase," Q. I was actually quoting from your e-mail. Sorry. I asked a confusing question. Let me start again. 19 You sent Mr. Blackwell at eletter that he needed to submit before the Trustee would: 11 that correct? 24 Latter the movement of the positions discussed earlier that are due as part of the LBI/Barclays transaction." Is that correct? A. That's correct. 26 Mr. Blackwell had brought me into a separate room and closed the door, and represented these were certain accounts that they were due as part of the asset purchase." Page 73 FRELINGHUYSEN - HIGHLY CONFIDENTIAL discussed between me and Mr. Borzi, Mr. Ullman and Mr. Gallagher. The file had been discussed. Mr. Blackwell had brought me into a separate room and closed the door. You mean the two of you went and sat at a desk in an office? A. No. Q. Why did you request a letter from 15 Mr. Blackwell in connection with the transfer you discussed with him, but didn't request a similar 19 Letter from Mr. Borzi in connection with the earlier transfer we looked at? 19 Mr. Blackwell to confirm that the requested assets were: 19 Mr. Blackwell to confirm that the requested assets were: 19 Mr. Blackwell to confirm that the requested assets were: 19 Mr. Blackwell to confirm that the requested assets were: 19 Mr. Blackwell to confirm that the requested ass		•	1	
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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	FRELINGHUYSEN - HIGHLY CONFIDENTIAL Q. And when you say "discussed earlier," you're referring to the discussions shown on your time records for the 24th. Right? A. Yes, that's correct. Q. And why did you need that letter? A. Because he had stated that they were due as part of the asset purchase agreement, and we were going to be basing that movement on his representation. Q. And you didn't request a similar letter when Mr. Borzi asked you to authorize transfer of pending client securities; did you? A. No. Q. Why did you request a letter from Mr. Blackwell in connection with the transfer you discussed with him, but didn't request a similar letter from Mr. Borzi in connection with the earlier transfer we looked at? MR. ROTHMAN: Objection to the form. A. The nature of the transfer was different. Q. In what I'm sorry. Go ahead.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	FRELINGHUYSEN - HIGHLY CONFIDENTIAL discussed between me and Mr. Borzi, Mr. Ullman and Mr. Gallagher. The file had been discussed. Mr. Blackwell had brought me into a separate room to discuss this, closed the door, and represented these were certain accounts that they needed to have transferred certain assets. Pardon me. Q. You say he took you into a separate room and closed the door. You mean the two of you went and sat at a desk in an office? A. Yeah. We went into his office. Q. Okay. And did you attach any significance to his closing the door? A. Most of the discussions I had had regarding transfer of customer assets had been on the operations floor with, you know, ten or 15 people who were on the team working on it. Q. Take a look at the draft letter attached to 671-B, the attachment. In that letter you ask Mr. Blackwell to confirm that the requested assets were:

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	Page 74		Page 75
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	Inc. which were sold to Barclays Capital, Inc.	2	e-mail string that was sent to you by Neal Ullman
3	pursuant to the asset purchase agreement dated as	3	at 4:19 p.m. on Friday, September 26, 2008?
4	of September 16, 2008, as amended."	4	A. I do recognize it to be that, yes.
5	Right?	5	Q. And that string was about the
6	A. (That's a correct reading of the	6	transfer of approximately \$269 million in
7	letter draft of the letter.	7	collateral from the 636 box at DTC to Barclays.
8	Q. And beyond just a correct reading	8	Is that correct?
9	of the letter, that was, in fact, what you were	9	A. Yes, it appears to discuss that
10	asking him to do. Right?	10	transfer.
11	A. I was, in fact, asking him to	11	Q. And in the most recent e-mail in
12	represent that these were assets under the APA.	12	that string, Mr. Ullman says to you:
13	Q. And you understood that they were	13	"Be over in a minute."
14	proprietary assets of LBI, not customer assets.	14	Right?
15	Right?	15	A. That's correct.
16	MR. ROTHMAN: Objection to the	16	Q. Okay. Did he, in fact, come over
17	form.	17	to your office to discuss that transfer?
18	A. I understood them to not be	18	A. I can't recall.
19	customer assets.	19	Q. Were you physically located near
20	(Exhibit 672-B marked for	20	Mr. Ullman during this period of time?
21	identification.)	21	A. We were on the same floor of the
22	Q. Have you had a chance to read	22	building. He was 100 yards away and around the
23	through Exhibit 672-B?	23	corner.
24	A. I have. Thank you.	24	Q. Do you remember ever discussing
25	Q. And do you recognize that as an	25	this request with Mr. Ullman?
		23	•
	Page 76		Page 77
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	A. No, I do not.	2	Q. Would it surprise you to learn
3	Q. Do you remember ever discussing	3	that?
4	this request with Ms. Vecchio?	4	MR. ROTHMAN: Objection to the
5	A. No, I do not.	5	form.
6	Q. Do you remember ever discussing	6	A. Would it surprise me now?
7	this request with anyone?	7	Q. Yes.
8	A. Then, no well, this wouldn't	8	A. Yes.
9	have been sufficient for me.	9	Q. Did you understand the
10	MR. ROTHMAN: That wasn't the	10	approximately \$269 million in securities
11	question he asked you.	11	referenced in this e-mail string to be a portion
12	Q. Why would this not have been	12	of the assets that Mr. Blackwell had discussed
13	sufficient for you?	13	with you a couple of days earlier?
14	A. It didn't contain an instruction.	14	MR. ROTHMAN: Objection to the
15	Q. What do you mean by "didn't contain	15	form.
16	an instruction"?	16	A. No, I did not know what these
17	A. It says:	17	assets were, and I did not know them to be related
18	"Be over in a minute."	18	to the conversation I'd had with Mr. Blackwell.
19	There's no instruction of what to	19	Q. Do you see anywhere on here any
20	do with it.	20	indication that these are customer assets?
21	Q. Are you aware that you had six	21	MR. ROTHMAN: Objection to the
22	minutes earlier actually already sent the	22	form.
23	instruction and authorization to the DTC on this	23	A. No.
24	transaction for this transfer, rather?	24	Q. Take a look at the earliest e-mail
25	A. No.	25	in this string. That's an e-mail from Monty
1			

	Pg 191	1	
	Page 78		Page 79
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	Forrest to Mister to Mr. Blackwell.	2	Q from a particular customer
3	Do you see that?	3	account?
4	A. I do see that, yes.	4	MR. ROTHMAN: Objection to the
5	Q. Okay. And if you look at the last	5	form.
6	sentence of the first paragraph of that e-mail,	6	A. DTCC is a complicated place. They
7	you see that Mr. Forrest writes that:	7	
8	"The list has changed a bit since	8	were doing the operations for us. We were trying to get a bulk of the assets across. We wouldn't
9		9	
	this morning as Paolo asked to take out the very		have wanted to gum up their systems with small
10 11	small pieces (under \$10)."	10 11	transfers.
12	Do you see that?		Q. Is that just your speculation now,
	A. I do see that sentence, yes.	12	or do you have any recollection of thinking that
13	Q. Would it have been acceptable to	13	at the time?
14	leave behind even small pieces if these were, in	14	A. That's my understanding of how the
15	fact, customer assets?	15	transfers were effected.
16	MR. ROTHMAN: Objection to the	16	Q. Can you think of any other
17	form.	17	transfers where small pieces of the of the
18	A. In the course of transferring	18	accounts to be transferred were excluded from the
19	customer assets we did many transfers, some of	19	transfer of DTC?
20	which were to catch up on transfers that had been	20	MR. ROTHMAN: Objection to the
21	left out in the initial files.	21	form. It assumes facts not in evidence.
22	Q. Can you think of any reason why, if	22	Q. You can answer.
23	you were transferring customer assets, you would	23	A. As a matter of fact, I know that,
24	exclude small portions of the customer assets	24	you know, over the course of doing these transfers
25	MR. ROTHMAN: Objection to	25	the smaller bits of securities had to be cut up
23	WIK. ROTTIWITIV. Objection to		the shaller end of securities had to be cut up
23	Page 80		•
	Page 80		Page 81
1	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL
1 2	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the	1 2	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok,
1 2 3	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files.	1 2 3	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others?
1 2 3 4	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at	1 2 3 4	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct.
1 2 3 4 5	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try	1 2 3 4 5	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you
1 2 3 4 5	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again.	1 2 3 4 5 6	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September,
1 2 3 4 5 6	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other	1 2 3 4 5 6 7	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008?
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1 2 3 4 5 6 7 8 9	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of	1 2 3 4 5 6 7 8	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on
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1 2 3 4 5 6 7 8 9 10	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of customer assets? MR. ROTHMAN: Objection to the	1 2 3 4 5 6 7 8 9 10	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on behalf of the strike that. And you were transmitting to the
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1 2 3 4 5 6 7 8 9 10 11 12	FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of customer assets? MR. ROTHMAN: Objection to the form. A. No.	1 2 3 4 5 6 7 8 9 10 11 12 13	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on behalf of the strike that. And you were transmitting to the DTCC the Trustee's authorization of the transfer of approximately \$269 million in securities. Is
1 2 3 4 5 6 7 8 9 10 11 12 13	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of customer assets? MR. ROTHMAN: Objection to the form. A. No. THE VIDEOGRAPHER: The time is	1 2 3 4 5 6 7 8 9 10 11 12 13 14	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on behalf of the strike that. And you were transmitting to the DTCC the Trustee's authorization of the transfer of approximately \$269 million in securities. Is that correct?
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of customer assets? MR. ROTHMAN: Objection to the form. A. No. THE VIDEOGRAPHER: The time is 11:27. We are going off the record.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on behalf of the strike that. And you were transmitting to the DTCC the Trustee's authorization of the transfer of approximately \$269 million in securities. Is that correct? A. There's no dollar figure.
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of customer assets? MR. ROTHMAN: Objection to the form. A. No. THE VIDEOGRAPHER: The time is 11:27. We are going off the record. (Recess taken.)	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on behalf of the strike that. And you were transmitting to the DTCC the Trustee's authorization of the transfer of approximately \$269 million in securities. Is that correct? A. There's no dollar figure. Q. If you'd take a look at the bottom
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of customer assets? MR. ROTHMAN: Objection to the form. A. No. THE VIDEOGRAPHER: The time is 11:27. We are going off the record. (Recess taken.) THE VIDEOGRAPHER: The time is	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on behalf of the strike that. And you were transmitting to the DTCC the Trustee's authorization of the transfer of approximately \$269 million in securities. Is that correct? A. There's no dollar figure. Q. If you'd take a look at the bottom of the first attachment.
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of customer assets? MR. ROTHMAN: Objection to the form. A. No. THE VIDEOGRAPHER: The time is 11:27. We are going off the record. (Recess taken.) THE VIDEOGRAPHER: The time is 11:36. We are back on the record.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on behalf of the strike that. And you were transmitting to the DTCC the Trustee's authorization of the transfer of approximately \$269 million in securities. Is that correct? A. There's no dollar figure. Q. If you'd take a look at the bottom of the first attachment. A. 269 units, yes.
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of customer assets? MR. ROTHMAN: Objection to the form. A. No. THE VIDEOGRAPHER: The time is 11:27. We are going off the record. (Recess taken.) THE VIDEOGRAPHER: The time is 11:36. We are back on the record. (Exhibit 673-B marked for	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on behalf of the strike that. And you were transmitting to the DTCC the Trustee's authorization of the transfer of approximately \$269 million in securities. Is that correct? A. There's no dollar figure. Q. If you'd take a look at the bottom of the first attachment. A. 269 units, yes. Q. And you think it's units, not
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Page 80 FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of customer assets? MR. ROTHMAN: Objection to the form. A. No. THE VIDEOGRAPHER: The time is 11:27. We are going off the record. (Recess taken.) THE VIDEOGRAPHER: The time is 11:36. We are back on the record.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Page 81 FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on behalf of the strike that. And you were transmitting to the DTCC the Trustee's authorization of the transfer of approximately \$269 million in securities. Is that correct? A. There's no dollar figure. Q. If you'd take a look at the bottom of the first attachment. A. 269 units, yes.
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of customer assets? MR. ROTHMAN: Objection to the form. A. No. THE VIDEOGRAPHER: The time is 11:27. We are going off the record. (Recess taken.) THE VIDEOGRAPHER: The time is 11:36. We are back on the record. (Exhibit 673-B marked for identification.) Q. Have you had a chance to look at	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on behalf of the strike that. And you were transmitting to the DTCC the Trustee's authorization of the transfer of approximately \$269 million in securities. Is that correct? A. There's no dollar figure. Q. If you'd take a look at the bottom of the first attachment. A. 269 units, yes. Q. And you think it's units, not
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of customer assets? MR. ROTHMAN: Objection to the form. A. No. THE VIDEOGRAPHER: The time is 11:27. We are going off the record. (Recess taken.) THE VIDEOGRAPHER: The time is 11:36. We are back on the record. (Exhibit 673-B marked for identification.)	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on behalf of the strike that. And you were transmitting to the DTCC the Trustee's authorization of the transfer of approximately \$269 million in securities. Is that correct? A. There's no dollar figure. Q. If you'd take a look at the bottom of the first attachment. A. 269 units, yes. Q. And you think it's units, not dollars?
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of customer assets? MR. ROTHMAN: Objection to the form. A. No. THE VIDEOGRAPHER: The time is 11:27. We are going off the record. (Recess taken.) THE VIDEOGRAPHER: The time is 11:36. We are back on the record. (Exhibit 673-B marked for identification.) Q. Have you had a chance to look at	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on behalf of the strike that. And you were transmitting to the DTCC the Trustee's authorization of the transfer of approximately \$269 million in securities. Is that correct? A. There's no dollar figure. Q. If you'd take a look at the bottom of the first attachment. A. 269 units, yes. Q. And you think it's units, not dollars? A. It doesn't say dollars. A lot of
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of customer assets? MR. ROTHMAN: Objection to the form. A. No. THE VIDEOGRAPHER: The time is 11:27. We are going off the record. (Recess taken.) THE VIDEOGRAPHER: The time is 11:36. We are back on the record. (Exhibit 673-B marked for identification.) Q. Have you had a chance to look at Exhibit 673-B?	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on behalf of the strike that. And you were transmitting to the DTCC the Trustee's authorization of the transfer of approximately \$269 million in securities. Is that correct? A. There's no dollar figure. Q. If you'd take a look at the bottom of the first attachment. A. 269 units, yes. Q. And you think it's units, not dollars? A. It doesn't say dollars. A lot of times they transferred numbers of shares.
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	FRELINGHUYSEN - HIGHLY CONFIDENTIAL later, so they were not always included in the initial files. Q. Not quite what I was asking, or at least may not what I intended to ask. Let me try it again. Can you think of any other transaction where small amounts of securities were deliberately excluded from a planned transfer of customer assets? MR. ROTHMAN: Objection to the form. A. No. THE VIDEOGRAPHER: The time is 11:27. We are going off the record. (Recess taken.) THE VIDEOGRAPHER: The time is 11:36. We are back on the record. (Exhibit 673-B marked for identification.) Q. Have you had a chance to look at Exhibit 673-B? A. I have, thank you.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	FRELINGHUYSEN - HIGHLY CONFIDENTIAL Mr. Ullman, Ms. Vecchio, Mr. Kobak, Mr. Kiplok, among others? A. Yes, that's correct. Q. And this was an e-mail that you sent at 4:13 p.m. on Friday the 26th of September, 2008? A. That's correct. Q. And you were authorizing on behalf of the strike that. And you were transmitting to the DTCC the Trustee's authorization of the transfer of approximately \$269 million in securities. Is that correct? A. There's no dollar figure. Q. If you'd take a look at the bottom of the first attachment. A. 269 units, yes. Q. And you think it's units, not dollars? A. It doesn't say dollars. A lot of times they transferred numbers of shares. Q. Do you know whether that's the

	Pg 192	- 01 -	
	Page 86		Page 87
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	"Lehman Market Value" it has a sum of	2	"Schultz Securities and securities
3	\$269,921,368.	3	delivered."
4	Do you see that?	4	Is that what you're referring to?
5	A. Yes, I see that.	5	A. Yes.
6	Q. Does this refresh your recollection	6	Q. Looking at the at
7	that the amount of the transfer you authorized	7	Exhibit 674-B
8	or strike that.	8	A. Yes.
9	Does this refresh your recollection	9	Q does that refresh your
10	that the amount of the transfer authorized in	10	recollection that you were informed by Mr. Fleming
11	Exhibit 673-B was, in fact, \$269 million?	11	on the 29th that a transfer of \$269 million in
12		12	·
13	MR. ROTHMAN: Objection to the		securities had taken place?
	form.	13	MR. ROTHMAN: Objection to the
14	A. The authorization from Mr. Kiplok	14	form.
15	doesn't state a value.	15	MR. SHAW: You can answer.
16	Q. Well, if you look at the chart that	16	A. By Mr. Fleming?
17	immediately precedes the authorization by	17	Q. Yes.
18	Mr. Kiplok, you'll see it contains almost the same	18	A. I don't recall that.
19	number. It's off by, it looks like, about \$20 as	19	Q. Well, you note that Mister it
20	the one attached to Exhibit 674-B that we looked	20	says "Dan" this is an e-mail from Mr. Tonucci
21	at a moment ago.	21	to Mr. Fleming, copying Mr. Marsal.
22	A. Yes, I see that the numbers are	22	Do you see where it says "Dan"
23	approximate and that the attachment on 674-B	23	this is an e-mail from Mr. Tonucci to Mr. Fleming.
24	contains two additional lines.	24	"Dan, can you advise the SIPC team
25	Q. Those being the lines:	25	with this transfer of assets that's been
	Page 88		- 00
	rage 00		Page 89
1	_	1	
1 2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1 2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL
2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL completed."	2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL spreadsheets as part of the transfer of assets to
2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL completed." A. That is what's written.	2 3	FRELINGHUYSEN - HIGHLY CONFIDENTIAL spreadsheets as part of the transfer of assets to Barclays Capital."
2 3 4	FRELINGHUYSEN - HIGHLY CONFIDENTIAL completed." A. That is what's written. Q. Okay. And do you remember	2 3 4	FRELINGHUYSEN - HIGHLY CONFIDENTIAL spreadsheets as part of the transfer of assets to Barclays Capital." Do you see that?
2 3 4 5	FRELINGHUYSEN - HIGHLY CONFIDENTIAL completed." A. That is what's written. Q. Okay. And do you remember Mr. Fleming ever advising any members of the SIPC	2 3 4 5	FRELINGHUYSEN - HIGHLY CONFIDENTIAL spreadsheets as part of the transfer of assets to Barclays Capital." Do you see that? A. I do see that.
2 3 4 5 6	FRELINGHUYSEN - HIGHLY CONFIDENTIAL completed." A. That is what's written. Q. Okay. And do you remember Mr. Fleming ever advising any members of the SIPC team that it had been completed?	2 3 4	FRELINGHUYSEN - HIGHLY CONFIDENTIAL spreadsheets as part of the transfer of assets to Barclays Capital." Do you see that? A. I do see that. Q. And then it attaches two worksheets
2 3 4 5 6 7	FRELINGHUYSEN - HIGHLY CONFIDENTIAL completed." A. That is what's written. Q. Okay. And do you remember Mr. Fleming ever advising any members of the SIPC team that it had been completed? A. I have no recollection of that.	2 3 4 5 6 7	FRELINGHUYSEN - HIGHLY CONFIDENTIAL spreadsheets as part of the transfer of assets to Barclays Capital." Do you see that? A. I do see that. Q. And then it attaches two worksheets which are not attached to this exhibit.
2 3 4 5 6 7 8	FRELINGHUYSEN - HIGHLY CONFIDENTIAL completed." A. That is what's written. Q. Okay. And do you remember Mr. Fleming ever advising any members of the SIPC team that it had been completed? A. I have no recollection of that. MR. SHAW: You can put 674-B aside.	2 3 4 5 6 7 8	FRELINGHUYSEN - HIGHLY CONFIDENTIAL spreadsheets as part of the transfer of assets to Barclays Capital." Do you see that? A. I do see that. Q. And then it attaches two worksheets which are not attached to this exhibit. Do you see that?
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2 3 4 5 6 7 8 9	FRELINGHUYSEN - HIGHLY CONFIDENTIAL completed." A. That is what's written. Q. Okay. And do you remember Mr. Fleming ever advising any members of the SIPC team that it had been completed? A. I have no recollection of that. MR. SHAW: You can put 674-B aside. (Exhibit 675-B marked for identification.) MR. SHAW: Take a moment to read	2 3 4 5 6 7 8 9 10	FRELINGHUYSEN - HIGHLY CONFIDENTIAL spreadsheets as part of the transfer of assets to Barclays Capital." Do you see that? A. I do see that. Q. And then it attaches two worksheets which are not attached to this exhibit. Do you see that? A. I do see that. Q. Do you recall this transfer? A. No.
2 3 4 5 6 7 8 9 10 11 12	FRELINGHUYSEN - HIGHLY CONFIDENTIAL completed." A. That is what's written. Q. Okay. And do you remember Mr. Fleming ever advising any members of the SIPC team that it had been completed? A. I have no recollection of that. MR. SHAW: You can put 674-B aside. (Exhibit 675-B marked for identification.) MR. SHAW: Take a moment to read what's now been marked as Exhibit 675-B,	2 3 4 5 6 7 8 9 10 11	FRELINGHUYSEN - HIGHLY CONFIDENTIAL spreadsheets as part of the transfer of assets to Barclays Capital." Do you see that? A. I do see that. Q. And then it attaches two worksheets which are not attached to this exhibit. Do you see that? A. I do see that. Q. Do you recall this transfer? A. No. Q. Do you know why this is headed
2 3 4 5 6 7 8 9 10 11 12 13	FRELINGHUYSEN - HIGHLY CONFIDENTIAL completed." A. That is what's written. Q. Okay. And do you remember Mr. Fleming ever advising any members of the SIPC team that it had been completed? A. I have no recollection of that. MR. SHAW: You can put 674-B aside. (Exhibit 675-B marked for identification.) MR. SHAW: Take a moment to read what's now been marked as Exhibit 675-B, please.	2 3 4 5 6 7 8 9 10 11 12 13	FRELINGHUYSEN - HIGHLY CONFIDENTIAL spreadsheets as part of the transfer of assets to Barclays Capital." Do you see that? A. I do see that. Q. And then it attaches two worksheets which are not attached to this exhibit. Do you see that? A. I do see that. Q. Do you recall this transfer? A. No. Q. Do you know why this is headed forward resending?
2 3 4 5 6 7 8 9 10 11 12 13 14	FRELINGHUYSEN - HIGHLY CONFIDENTIAL completed." A. That is what's written. Q. Okay. And do you remember Mr. Fleming ever advising any members of the SIPC team that it had been completed? A. I have no recollection of that. MR. SHAW: You can put 674-B aside. (Exhibit 675-B marked for identification.) MR. SHAW: Take a moment to read what's now been marked as Exhibit 675-B, please. Q. Have you had a chance to read	2 3 4 5 6 7 8 9 10 11 12 13	FRELINGHUYSEN - HIGHLY CONFIDENTIAL spreadsheets as part of the transfer of assets to Barclays Capital." Do you see that? A. I do see that. Q. And then it attaches two worksheets which are not attached to this exhibit. Do you see that? A. I do see that. Q. Do you recall this transfer? A. No. Q. Do you know why this is headed forward resending? A. No.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	FRELINGHUYSEN - HIGHLY CONFIDENTIAL completed." A. That is what's written. Q. Okay. And do you remember Mr. Fleming ever advising any members of the SIPC team that it had been completed? A. I have no recollection of that. MR. SHAW: You can put 674-B aside. (Exhibit 675-B marked for identification.) MR. SHAW: Take a moment to read what's now been marked as Exhibit 675-B, please. Q. Have you had a chance to read through that? A. I have. Q. Do you recognize that as an e-mail string between you and Mr. Ullman, dated	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	FRELINGHUYSEN - HIGHLY CONFIDENTIAL spreadsheets as part of the transfer of assets to Barclays Capital." Do you see that? A. I do see that. Q. And then it attaches two worksheets which are not attached to this exhibit. Do you see that? A. I do see that. Q. Do you recall this transfer? A. No. Q. Do you know why this is headed forward resending? A. No. Q. Take a look at the second e-mail in the string. You see that your response to Mr. Ullman was that you asked him to confirm that: " the attachments to the e-mail
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	FRELINGHUYSEN - HIGHLY CONFIDENTIAL completed." A. That is what's written. Q. Okay. And do you remember Mr. Fleming ever advising any members of the SIPC team that it had been completed? A. I have no recollection of that. MR. SHAW: You can put 674-B aside. (Exhibit 675-B marked for identification.) MR. SHAW: Take a moment to read what's now been marked as Exhibit 675-B, please. Q. Have you had a chance to read through that? A. I have. Q. Do you recognize that as an e-mail string between you and Mr. Ullman, dated September 29th, 2008? A. I do, yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	FRELINGHUYSEN - HIGHLY CONFIDENTIAL spreadsheets as part of the transfer of assets to Barclays Capital." Do you see that? A. I do see that. Q. And then it attaches two worksheets which are not attached to this exhibit. Do you see that? A. I do see that. Q. Do you recall this transfer? A. No. Q. Do you know why this is headed forward resending? A. No. Q. Take a look at the second e-mail in the string. You see that your response to Mr. Ullman was that you asked him to confirm that: " the attachments to the e-mail below represent assets of Lehman Brothers, Inc. that were sold to Barclays Capital, Inc. pursuant
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Pg 193 01 194					
	Page 90		Page 91		
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL		
2	same as the representation that you asked	2	to be requesting transfer of customer securities.		
3	Mr. Blackwell to make in the draft letter that you	3	Q. Then why are you asking for this		
4	e-mailed to him a few days earlier. Is that	4	confirmation?		
5	right?	5	A. I asked for confirmation that the		
6	MR. ROTHMAN: Objection to the	6	assets being transferred were appropriate for		
7	form.	7	transfer every time I made a transfer.		
8	A. I communicated with Mr. Ullman and	8	Q. Okay. You didn't ask him to		
9	Mister and Mr. Blackwell on different subjects.	9	confirm that these were customer assets. Right?		
10	Q. That's not my question, sir.	10	A. My understanding with Mr. Ullman is		
11	My question is: The confirmation	11	that we were transferring customer assets.		
12	• •	12			
13	you were seeking from Mr. Ullman with respect to		Q. That's not my question, sir.		
	these transfers was substantially the same as the	13	My question is: You did not ask		
14	confirmation you sought from Mr. Blackwell in the	14	you did not ask him to confirm that these were		
15	letter that you in the draft letter that you	15	customer assets being transferred. Right?		
16	sent him on the 25th?	16	MR. ROTHMAN: Objection. Asked and		
17	MR. ROTHMAN: Same objection.	17	answered.		
18	Q. Is that correct?	18	Q. You can answer.		
19	A. It does seem similar, yes.	19	A. I asked him to no.		
20	Q. Okay. And now because you	20	Q. And you previously stated that		
21	understood that what Mr. Ullman was asking you to	21	strike that.		
22	transfer were non-customer assets, just as the	22	And Mr. Ullman confirmed at about		
23	ones Mr. Blackwell had discussed with you earlier.	23	3:50 p.m. on the 29th that what you had asked him		
24	Right?	24	to confirm was correct. Is that right?		
25	A. No. I only understood Mr. Ullman	25	A. Yes.		
	Page 92		Page 93		
1		1			
1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL		
2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL MR. SHAW: Showing you what's been	2	FRELINGHUYSEN - HIGHLY CONFIDENTIAL pursuant to the Asset Purchase Agreement. Isn't		
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1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL		
2	Asset Purchase Agreement dealt with things other	2	Q. Can you show me where on this on		
2 3	than customer assets. Correct?	3	Exhibit 675-B you asked Mr. Ullman to confirm that		
4	MR. ROTHMAN: Objection to the	4	these were customer assets.		
5	form.	5	A. I asked that they were being		
6	A. I was asking him to make that	6	transferred pursuant to the Asset Purchase		
7	representation.	7	Agreement, which I understood to transfer customer		
8	Q. And you were asking Mr. Ullman	8	assets.		
9	going back to Exhibit 675-B, you were asking	9	Q. And which you also understood to		
10	Mr. Ullman to make that same representation in	10	transfer non-customer assets. Right?		
11	connection with these two transfers. Correct?	11	A. I had asked other personnel to		
12	MR. ROTHMAN: Objection to the	12	inform me or to represent to me that it		
13	form.	13	transferred other assets.		
14	A. I asked Mr. Ullman to confirm that	14	Q. So you were asking Mr. Blackwell to		
15	we were transferring customer assets in connection	15	give you legal advice on what the Asset Purchase		
16	with the APA.	16	Agreement transferred?		
17	Q. Where does where do you see the	17			
18	words "confirm that these were customer assets"?	18	MR. ROTHMAN: Objection to the form.		
19	A. My normal course of dealing with	19	A. Representation is not legal advice.		
20	Mr. Ullman was with customer assets.	20	MR. SHAW: Let's take a five-minute		
21	Q. Okay. But you did not ask	21	break. I may be done. I just want to look at		
22	Mr. Ullman to confirm that these were, in fact,	22	· · · · · · · · · · · · · · · · · · ·		
23	customer assets; did you?	23	a couple of things. THE VIDEOGRAPHER: The time is		
24	MR. ROTHMAN: Objection to the	24	11:58. We are going off the record.		
25		25	(Recess taken.)		
2.5	form. He just said that he did.	23	, , , , , , , , , , , , , , , , , , ,		
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1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL	1	FRELINGHUYSEN - HIGHLY CONFIDENTIAL		
2	THE VIDEOGRAPHER: The time is	2	the clarification after 6:00 that morning?		
3	12:03. We are back on the record.	3	A. I don't recall receiving or seeing		
4	MR. SHAW: Mr. Frelinghuysen, I	4	any further drafts of the clarification letter		
5	have no further questions for you at this	5	that morning.		
6	time. Thank you very much.	6	Q. Do you know if the draft that you		
7	THE WITNESS: Thank you.	7	got at 6:00 a.m. that morning is the same as the		
8	EXAMINATION BY	8	exhibit that you've been shown here today?		
9	MR. ROTHMAN:	9	A. I do not know that.		
10	Q. I'd like to just clarify one thing	10	MR. ROTHMAN: That's all I have.		
11	with you, if I may, Mr. Frelinghuysen.	11	MR. SHAW: Just one question		
12	Do you recall telling Mr. Shaw that	12	following up on that.		
13	you saw a draft of the clarification letter on	13	EXAMINATION BY		
14	Monday morning, the 23rd or 22nd?	14	MR. SHAW:		
15	A. 22nd.	15	Q. Mr. Rothman asked you if you got		
16	Q. And you assumed that that was the	16	any further drafts of the clarification letter		
17	final version?	17	after 6:00 that morning, and you said no.		
18	A. Yes.	18	Were you speaking only for		
19	Q. When did you see that draft?	19	yourself, or were you purporting to speak for		
20	A. I saw that draft around 6:00 a.m.	20	the for any representative of the Trustee		
21	Q. And why did you assume it was the	21	let me let me take that question out and shoot		
22	final version?	22	it and start again.		
		23	When Mr. Rothman asked you if you		
23	A. We stopped talking about the	43	when wir. Rounnan asked you if you		
2324	A. We stopped talking about the clarification letter at that point.	24	recalled receiving any further drafts of the		
7					